

AN ECONOMIC ANALYSIS OF POLITICAL BELIEFS
IN TORT AND CRIMINAL LAW

by

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ABSTRACT

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This dissertation examines juror decision-making from an economic perspective and uses panel data to determine the extent to which this perspective is consistent with real world trial outcomes. Chapter One surveys the relevant economic literature and formulates an economic hypothesis of juror behavior based on juror incentives, making the case that jurors may behave as if they are *rationaly political*. Chapters Two and Three utilize relatively large panels of data to determine whether this economic perspective helps explain real world trial outcomes, exploring how jury pools' political beliefs affect average tort awards, criminal sentences, and criminal conviction rates. The key empirical results are that Democratic-leaning jury pools have relatively lower conviction rates and choose longer sentences in criminal trials, and award more in tort trials. These results are robust over multiple data sets and model specifications, lending empirical support to the economic theory of juror decision-making presented in Chapter One.

CHAPTER 1 Making the Case for a Rationally Political Juror

The Sixth Amendment to the United States Constitution requires that the American jury be “impartial.” This impartiality demands that each juror conscientiously leave his or her personal attitudes at the door (to the extent that this is possible) and decide the case based on the presented evidence and judicial instruction.¹ Yet, a number of experimental and empirical studies (summarized below) have shown that demographics and personal characteristics often influence jury decision-making, frequently by a significant amount. This chapter examines the economic incentives that jurors face to help explain why jurors may deviate from the legal ideal of the conscientious juror, and subsequently explores the role of political beliefs in particular within the context of juror decision-making.

Jurors are, for the most part, anonymous and insulated from outside pressures, much like an individual in a voting booth. Hence, there is essentially no marginal cost for

¹ This reference to the “ideal juror” reflects the dominant view of the ideal American juror, but one that not everyone in the legal community shares. In *We, the Jury*, Jeffrey Abramson described the first ideal: “The first and more familiar one highlights the impartiality of the juror and the ignorance that, ironically, makes the impartial juror possible...Precisely because [impartial jurors] bring no personal knowledge or opinions to the case, they can judge it with distance and dispassion that marks impartial judges...Their great virtue is that their minds ‘should be as white Paper...’” (Abramson 2000, p. 17). He went on to discuss another ideal as it: “emphasizes the closeness of the juror to the case on trial: the juror as peer and neighbor...[as] such jurors can judge cases better than strangers because they know the conscious of the community and can apply the law in ways that resonate with their community’s moral values and common sense” (Abramson 2000, p. 18). This paper is referring to the former portrait of the ideal juror when discussing the “ideal juror” henceforth, acknowledging here that not everyone in the legal community (including Abramson) believes this is a realistic or even desirable ideal.

allowing one's political leanings to factor into one's decision-making process as a juror. Yet many individuals may realize a marginal benefit (in terms of his or her utility or happiness) to expressing his or her personal political attitudes. Many people vote in elections precisely for this reason. Thus, by weighing their own marginal costs and benefits, rational jurors may depart from impartiality in favor of a more utility maximizing decision to incorporate one's political leanings into the verdict. The central purpose of this dissertation is to explore this possibility analytically and empirically.

This chapter consists of five sections. In the first section I make the case that jurors are *rationaly political*, as I describe the applied microeconomic framework provided by Gary Becker (1957) and Bryan Caplan (2007) to analogize juror incentives to monopolist and voter incentives. Second, I describe a juror's decision-making process in a bit more detail using a simple model. The third section reviews the experimental juror literature, which sheds a bit more light on the "black box" of jury decision-making and incentives in a laboratory setting. In the fourth section I briefly survey prior empirical research on criminal and tort trial outcomes. The fifth and sixth sections include a further discussion and conclusion of this dissertation chapter.

I. The Economics of Expressing Personal Tastes and Attitudes

Gary Becker argued that "the economic approach [to human behavior] provides a valuable unified framework for understanding *all* human behavior" (Becker 1976, p.8). This includes market and non-market behavior alike, from monopolist to voter. Economists like Gary Becker (1957) and Bryan Caplan (2007) have employed basic price theory to understand a variety of decision-making by analyzing the incentives and the

environment under which rational individuals operate. This section summarizes their insights and applies the same general framework to juror decision-making, building the economic case for what I call the *rational political* juror.

Caplan and Becker distinguish between two general environments in which individuals express personal attitudes or tastes, which I call *low price of expression* and *high price of expression* environments. A *high price of expression* environment, like a competitive market, oftentimes imposes costs on individuals for expressing personal attitudes or tastes (particularly attitudes that depart from rational expectations), usually requiring individuals to give up income or wealth in order to maintain these attitudes or tastes. In a *low price of expression* environment, like a monopolistic market or in a voting booth, individuals may express their personal attitudes with minimal if any personal cost. Although there is no discontinuity between environments, differentiating between them is useful for drawing analogies between monopolist, voter, and juror decision-making.

A. *Becker's Monopolist Expresses Her Taste for Discrimination*

In his pioneering book *The Economics of Discrimination*, Gary Becker (1957) detailed an economic framework that systematically and quantitatively analyzed discrimination. He explained that economic actors like consumers, employers, and employees usually pay (i.e. forfeit income or pay a higher price) to express their “tastes for discrimination.” For example, Becker’s economic approach sees discriminating employers acting *as if* they are willing to pay a premium for employing a white worker²

² The discriminating employer pays the white employee $w(1+d)$, where w is the market wage (or marginal revenue product in equilibrium) and d is what Becker calls the “discrimination coefficient,” or the premium

instead of a minority worker. He showed that employers in a competitive marketplace who express their tastes for discrimination suffered losses. They must accept below-market returns given their higher costs, resulting in being bought-out or driven-out of business by non-discriminating firms (Ehrenberg and Smith 2003, p.398). Hence, this relatively high cost of being run out of business categorizes the competitive marketplace as a *high price of expression* environment, where an individual may pay dearly for expressing her tastes for discrimination. Put simply, discrimination is expensive in this environment. Thus, Becker predicted that we should see relatively little employer discrimination in the competitive marketplace.

Becker also pointed out that we should see more discriminatory behavior in a monopolistic market than in a competitive one because monopolists³ do not face the same kind of competitive pressure to keep costs low (Becker 1957, p.39). Monopolists need not fear their competition undercutting them on price because, by definition, there is no competition. In fact, many government regulated monopolies⁴ have an incentive to pad or bloat costs because regulators tend to regulate profits anyway. For example, if regulators heavily tax (or even seize all) profits beyond a certain point, then the monopolist has an incentive to bloat costs with fringe benefits or engage in costly discrimination so long as these yield her utility. These monopolists face a *low price of*

the employer is willing to pay above a minority worker's wage rate. Conversely, a discriminating employer would offer a minority worker $w(1-d)$, or a discounted wage as compared to the white employee. Further, Becker also assumes that all workers have the same productivity.

³ Particularly, Becker singles-out non-transferable monopolists. Transferable monopolies can be sold to a non-discriminating monopolist, who will realize higher returns and would be willing to pay a higher (present value) sum for the monopoly than the discriminating monopolist expects to receive.

⁴ For example, regulated monopolies may be commanded to produce such that Price = Marginal Cost, or Price = Average Cost.

expression environment to indulge their tastes for discrimination. Thus, Becker predicted that we would see relatively more employer discrimination in monopolistic markets. Becker subsequently showed that the empirical evidence supports his predictions.

B. Caplan's Voter Expresses Her Taste for Irrationality

In *The Myth of the Rational Voter*, Bryan Caplan (2007) takes an economic approach to explaining voter behavior. Caplan's theory of "rational irrationality" reconciles why individuals behave rationally (e.g. maximize income) in a market setting while they systematically depart from rational expectations (e.g. oppose income maximizing public policies that economists favor) in the voting booth. For example, if a New York City grocery store owner believed that foreigners were the root cause of all of America's problems and refused service to anyone who appeared foreign, she would likely be harshly punished by the market in the form of drastically lower sales. In this instance, the grocery store owner is the "decisive voter" in her store's policy⁵ in that she will *actually* decide the policy outcome. Hence, the store owner will personally pay a high price for expressing her attitudes toward foreigners in this *high price of expression* setting; or, Caplan calls this a high "price of irrationality."⁶ As a result, we should see a relatively small (if any) amount of this behavior in these high price settings.

Caplan's theory bears congruence with Becker's as he explains why rational individuals may choose to express or act on their beliefs when the price of doing so is low. In particular, the same grocery store owner may instead refrain from such a

⁵ In the rational voter model (explained below), we can think of her probability of being decisive as 1.

⁶ A principal contribution of *The Myth of the Rational Voter* is highlighting the inverse relationship between price and quantity of irrationality, i.e. the irrationality demand curve slopes downward.

personally costly *store* policy yet vote for (the candidate who will deliver) *public* policy consistent with her attitudes toward foreigners. This occurs because one voter is almost never decisive in large (to even relatively small) sized elections. That is, the probability of an individual voter breaking a tie is so minute that it is essentially zero. The rational voter views the potential negative policy effects on her wealth from *her* vote as null.⁷ Caplan points out that, “if one vote cannot change policy outcomes, the price of irrationality is zero” (Caplan 2007, p.132). Or, put differently, the rational voter operates in a *low (or zero) price of expression* environment where she may satiate her attitudes (e.g. toward foreigners) without paying a price individually.⁸ Like Becker, Caplan’s theory of the *rationally irrational* voter reconciles different behavior by recognizing that individuals will satisfy their non-pecuniary preferences and tastes when the price of doing so is low to nil.

Like Becker, Caplan’s empirical evidence lends support to this prediction. Caplan uses survey data from the 1996 Survey of Americans and Economists on the Economy to

⁷ This idea first appeared in Downs’ (1957) *Economic Theory of Democracy*. The rational voter’s expected utility from voting $U = P*B - C$, where P is the probability that a voter will be decisive, B is the material benefit the decisive vote will gain over the alternative, and C is the cost to voting. Since P is near zero, the material benefit over the alternative policy/candidate will not be large enough to justify the cost of voting. Riker and Ordeshook (1968) added a “D” term to the model in order to capture non-pecuniary benefits associated with voting (like duty). This model remains controversial within the literature; but, Caplan’s point relies strictly on the P*B term, which for all intents and purposes is zero or minutely small.

⁸ Caplan goes on to make the case that while political irrationality is a free good for the individual; it presents a negative externality for the public. He uses the analogy of automobile pollution (Caplan 2007, p.121). The pollution of an individual’s car for one trip makes the air she breathes worse by a imperceptibly small amount (worth, say, 1/10 of one cent), but it may also affect another 999,999 local people who breathe that air by the same small amount. The *social* cost of her pollution is \$1000, while the *private* cost is a mere 1/10 of one cent. In this case the negative externality is considerable, though the private action seems rational (i.e. the benefit exceeds this small cost). In the same vein, voting “irrationally” confers a negative externality to the extent that public policy affects millions of people.

reveal that voters systematically depart from economists' views on public policy.⁹ He points out that voters express four categorical biases¹⁰: anti-market, pessimistic, anti-foreign, and make-work bias. These biases, in Caplan's view, lead voters to approve of (candidates who support) policies that reduce national welfare or income. Moreover, voters have *preferences over beliefs* in that "instead of weighing claims, [voters] can show nepotism toward [their] favorite beliefs" in order to satisfy their preferences (Caplan 2007, p.14). Caplan argues that voters intrinsically value (or have increasing utility in) these beliefs or attitudes. In Caplan's view, voters have "tastes for irrationality," which they do not share with economists.

C. *The Juror Expresses Her Taste for Political Ideology*

Like monopolists and voters, jurors participate in a *low price of expression* environment where individuals may express their personal attitudes or tastes without costly punishment.¹¹ Jurors face these incentives primarily because their compensation is in no way tied to their decision and they cannot be held legally liable for that decision (Jonakait 2003, p.249). Moreover, jurors play what economists and game theorists call a "one-shot game." Once the jury makes its decision, the game ends. They collect their small fee-for-service and go home. The pecuniary incentives for the juror remain the same regardless of the decision he or she makes while playing this "game." While this is usually interpreted by the legal profession as placing jurors in a position to be uniquely

⁹ A detailed account of his results can be found in either Caplan (2007) or Caplan (2002).

¹⁰ Caplan argues that "biased" beliefs are those that systematically depart from economists' beliefs.

¹¹ As with Caplan's voter model, there is an inverse relationship between price and quantity of political expression.

objective, economists like Becker and Caplan might ask: why *should* jurors be objective or impartial and behave as prescribed? What incentives do they face?

The common law tradition of not holding jurors legally accountable for their decisions predates the American Revolution by more than a century. During the 17th century the Quaker religion was illegal in England. But in 1670, having been locked out of their Quaker meetinghouse, William Penn and William Mead held a Quaker meeting in the street (Jonakait 2003, p.249). They were subsequently charged with capital offenses in front of a jury. Given the facts of the case and the current English law, the judge instructed the jury to convict Penn and Mead. In fact, the judges told the jury that, “you shall be locked up without meat, drink, fire, and tobacco; you shall not think thus to abuse the court; we will have a verdict, by the help of God, or you shall starve for it” (Vidmar and Hans, p. 29). However, the jury refused to convict and eventually acquitted them; and, the judge subsequently fined and imprisoned the jurors for doing so (Jonakait 2003, p.249). A higher court reviewed the legality of imprisoning jurors in what came to be known as *Bushnell’s case*, in which they ruled that, “there was little point to a jury trial...if the jury could be judicially commanded to reach a specific result” (Jonakait 2003, p.250). From that point forward jurors could neither be punished nor rewarded for their verdict, which has since taken root in the American legal system.

Since *Bushnell’s case*, the jury’s lack of accountability has transformed the jury process into a one-shot game. Once the jury makes its decision, the game is over. After that decision the individual juror does not have to worry about official retaliation by the state. Again, this independence is often viewed by the legal profession as a virtue because

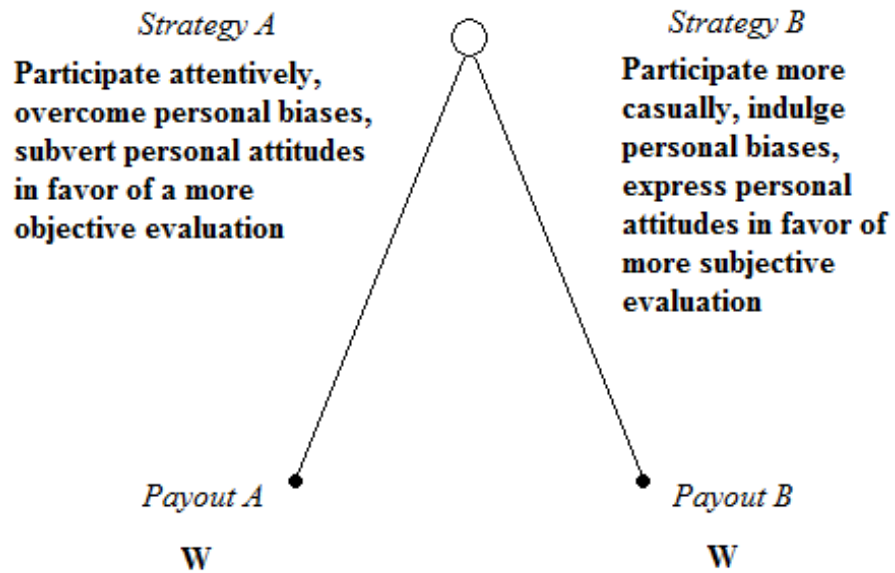
it puts jurors in a position of impartiality. Yet this also puts the juror into a similar position as the monopolist and the voter. The monopolist, voter, and juror alike face *low price of expression* environments such that they can all *rationally* express their personal attitudes and tastes without punishment and little to no cost to their wealth. Essentially, in such low cost environments individuals have an opportunity to consume a free good. In all of the above cases, individual conscientiousness could play a role in overcoming these personal tendencies, which requires empirical study to verify whether conscientiousness overcomes such incentives. Hence, Becker (1957) and Caplan (2007) used available data to determine whether individuals actually succumb to expressing their personal attitudes in these settings. One might say that Becker (1957) showed that actual monopolists are “rationally discriminatory.” Caplan (2007) determined that actual voters are “rationally irrational.” And, I provide evidence below that actual jurors behave *rationally political*.

II. Juror Decision-Making and Economic Incentives – A Simple Model

As outlined in the previous section, jurors are compensated the same, irregardless of their effort or decisions they make. Figure 1 depicts this simple one-shot game that jurors play using a simple game tree. At the decision node (i.e. beginning of the game) the juror must decide between two (simplified) strategies: A and B. Strategy A roughly approximates what the legal system’s ideal juror should do: participate attentively, overcome personal biases, subvert personal attitudes (like political beliefs), and “consider the competing versions of the facts presented by the parties and arrive at a verdict in line

with the burden of proof” (Vidmar and Hans, p.129).¹² Strategy B is more or less the opposite extreme (i.e. the less than ideal juror), where a juror participates more casually, indulges personal biases, and uses her position as a juror to express personal attitudes or beliefs. One can see that both strategies achieve the same monetary payout, W, which is the pecuniary compensation (or wage) for completing jury duty. Wealth maximizing rational agents would be indifferent between the two strategies. Like the monopolist and the voter, expressing one’s personal beliefs in this environment does not affect one’s wealth.

Figure 1 - Pecuniary Payouts in the One-Shot Juror Game

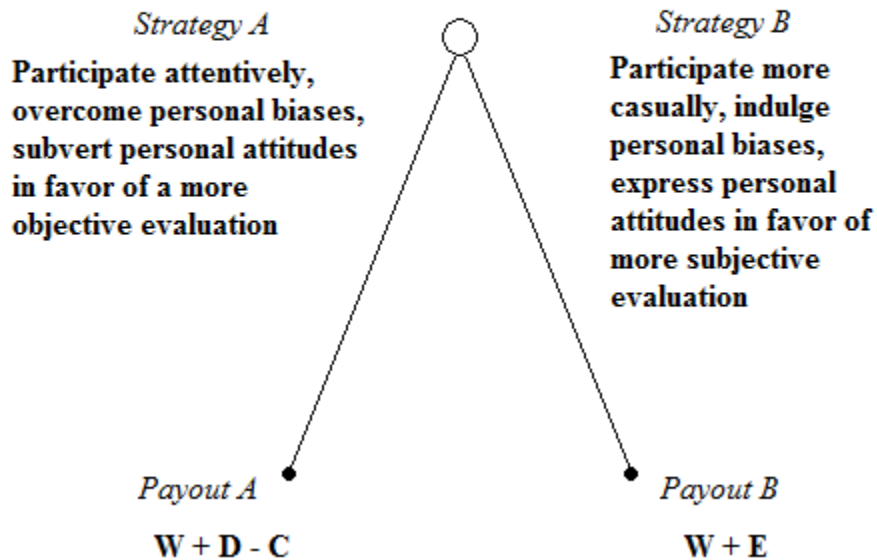


Economists have long recognized the individuals maximize more than simply wealth. Individuals certainly consider non-pecuniary costs and benefits. In Figure 2 the

¹² Again, as pointed out in the first footnote, this version of the law’s ideal juror is, “a blank slate on which attorneys can write” (Vidmar and Hans, p. 129).

payoffs have changed to reflect this. Jurors who choose strategy A may do so because it is the “right thing,” in that they may feel it is their duty, D , to act as conscientious as possible. As a result, this makes them feel good.¹³ We can think of D as the marginal benefit of conscientiousness. Strategy A also has a cost, C , that represents the additional effort put forth by the juror to remain attentive, attempt to overcome her own biases (which may be painful), and accurately carry out one’s duties as instructed. We can think

**Figure 2 - Utility Payouts
in the One-Shot Juror Game**



of this as the marginal cost of conscientious over simply showing up and voting one’s *a priori* preferences. Finally, strategy B incorporates the benefit, E , to expressing one’s

¹³ Notice that strategy A looks quite similar to Riker and Ordeshook’s (1968) rational voter model, except that W is the pecuniary wealth benefit rather than $P \cdot B$. Remember, the actual jury decision either way is not tied to the juror’s wealth, so the probability of decisiveness does not play a role *ex ante*.

personal attitudes (e.g. political attitudes).¹⁴ Remember, Caplan (2007) pointed out that voters have *preferences over beliefs*, which encapsulates the idea of this E term. Personal beliefs have positive utility benefits; or, more simply, some personal beliefs just make individuals feel good. I argue that, like voters, this could be true for jurors as well.

An example might clarify my simple model of juror decision-making. Suppose we are considering a juror in a tort case involving a low-income plaintiff who has allegedly been injured by a wealthy defendant. Further suppose this juror has strong political feelings about income equality and routinely votes for political candidates that make income redistribution a cornerstone of their platforms. She could choose strategy B, and indulges her political preference by voting to redistribute wealth irregardless of the evidence, as this fits with her explicit political preference. In this rather extreme example, she may choose this route because she has preferences over beliefs (e.g. wealth redistribution). Caplan points out that “letting emotions or ideology corrupt our thinking is an easy way to satisfy such preferences” (Caplan 2007, p.14). And, like the voter or the monopolist, this juror pays no price for receiving this benefit in this low price of expression environment. The juror receives the same monetary payment, W , regardless of what decision she makes and she cannot be officially punished for this action. Thus, because this strategy essentially costs nothing to her, the juror faces the same incentive as Caplan’s voter where he “expect[s] people to ‘sate’ their demand for political delusion, to believe whatever makes them feel best” (Caplan 2007, p.18).

¹⁴ We can think of this as knowingly expressing one’s own personal attitudes. In the case of bias, we may not *know* we are expressing a bias and therefore may not gain additional utility by expressing those attitudes.

But the juror may choose strategy A out of a sense of civic duty. She may decide to evaluate the evidence and facts of the case objectively (or, perhaps subjectively, but with a conscientious *effort* to remain objective) as instructed by the judge, and she may conclude that the facts meet the standard that the law prescribes in order to reach a verdict. Whether or not her evaluation is actually objective is less relevant than the fact that she made a conscientious effort to do so, which has costs. This cost of conscientious effort has two primary components. First, conscientiousness requires effort (in both mental deliberation and physical attentiveness) above and beyond that which is required to complete strategy A. Second, the juror here refrains from indulging in her political ideology, and potentially deliberating in a way that could be painful to her ideologically. She will choose this strategy only if it yields more utility than the former.¹⁵

Thus, the rational juror may weigh her options in a utility maximizing way and arrive at a strategy inconsistent with the intentions of the justice system. It is easy to see that the rational juror will choose strategy B if $E > (D - C)$, or choose strategy A if $(D - C) > E$ for the individual in this particular example. In reality, the decision is a lot more complex, as there may be a number of strategies between these two extremes as jurors may choose some level of both duty *and* expression,¹⁶ as individuals have varying values for these (potentially interrelated) variables. But perhaps the more important takeaway is that approaching the juror's decision from an economic, utility maximization viewpoint,

¹⁵ In addition, this strategy seems plausible because it is reasonable to expect that the jurors who actually showed up may have done so out of their civic duty. Though, they may have shown up for other reasons (including the intent to express their political beliefs, as with voting), which is a discussion outside the scope of this paper.

¹⁶ That is, the juror may simply maximize: $W + f(D, C, E)$

allows one to see how easily a utility-maximizing juror may rationally choose to depart from the objective ideal. One can see how it might be completely rational for jurors to make decisions and behave contrary to what is asked of them.

III. The Experimental Jury – The Literature

Scholars often refer to the jury as a “black box” (e.g. Moore (2000)) because relatively little is known about how it actually arrives at its decision. With a few exceptions, most research that looks inside the “black box” (i.e. observed deliberations and their results in a controlled setting) does so through laboratory experiments.¹⁷ One recent exception is the research by Seidman Diamond et al (2003) that, “provided an unprecedented look into the jury room through the videotaping and analysis of the trials and the discussions and deliberations of 50 Arizona civil juries,” which was made possible by a rare natural experiment in the Arizona legal system. But, real world experiments like this are rare. Lab experiments, typically using mock juries, allow social scientists to control a number of complicating factors that would normally arise in real world settings. This section reveals some of what we have learned about juries through lab experiments. Namely, experimental jurors generally fail to: 1) follow instructions, 2) understand risk, and 3) complete basic calculations, which is behavior consistent with the incentives they face in this particular environment. This section underscores the costs that jurors faces.

¹⁷ Other research has included post-trial interviews, questionnaires, and other real world research methods. Non-experimental methods, however, lack the same kind of causal interpretive power that the laboratory can provide.

A number of studies have shown that jurors seldom recall instructions from the judge. Yet, one of the most important tasks of the juror is to heed instructions. Judges inform jurors that they need not “seek out the law that is to be applied to the case,” rather the “trial judge instructs them about the legal principles that are relevant to the case,” which they should use along with their sense of norms to arrive at their decision (Jonakait 2003, p.198). The task of closely following instructions has a marginal cost for which jurors receive no marginal pecuniary benefit. Not surprisingly, given their incentives, juries depart from this ideal too. Many experimental studies find that participants score astonishingly low when asked to recall portions of the judges’ instructions.¹⁸ The median juror recalled approximately 5% of these instructions in one study, while the average was a bit higher at 9% (Hastie et al 1998, p.295). Nearly one-third of these jurors scored a zero on the instructions comprehension test.¹⁹ This study is consistent with most real world studies of juror comprehension, one of which notes: “jurors do not understand a large portion of instructions presented to them...it is common to find over half the instructions misunderstood, and even the most optimistic results indicate that roughly 30% of the instructions are not understood” (Lieberman 1997, p.596). Thus, on one of their most important tasks, jurors markedly depart from the conscientious objective

¹⁸ Perhaps the principle reason why jurors score so low is that instructions are usually written in “legalese” or language incomprehensible to anyone without a law degree.

¹⁹ Remarkably, almost none of the administered instruction comprehension tests were left blank in this study. Most of the incorrect responses were lengthy, indicating conscientious effort on the part of the participants. So, jurors tend to apply effort on some tasks (like writing), and fall short on others (like listening and comprehending).

ideal,²⁰ which suggests that jurors respond to the marginal incentives of their environment (i.e. the relatively high cost of deciphering and heeding instructions).²¹

A number of experimental studies have found that jurors were either unable or unwilling to deal with risk and probabilities, a crucial implicit element of many tort cases. Since Judge Learned Hand's precise definition of negligence in *United States v. Carroll Towing*²² the legal standard of due care requires jurors (and judges) to think about risk tradeoffs when determining negligence (though usually implicitly, as the instruction's definition of negligence is often somewhat ambiguous and not very explicit).²³ Judge Hand described a negligence standard of weighing the (marginal) benefits of precaution against the (marginal) cost of precaution. W. Kip Viscusi conducted a number of studies examining how well juries evaluate these risks, probabilities, and tradeoffs. Oddly, Viscusi (2000) found that jurors punish corporations for simply weighing these costs and benefits for product safety (as the Hand Rule prescribes), even when a corporation values

²⁰ If the instructions are incomprehensible to anyone without a law degree, which is usually the case with real world instructions and sometimes the case in laboratory experiments, then juror incentives may not be the only mechanism through which political beliefs affect outcomes. Incomprehensible instructions may introduce ambiguity that invites even the conscientious juror to follow her political compass. That is, the conscientious juror may not even know what the conscientious action actually is, deferring to her personal beliefs and so forth. A number of the aforementioned studies have called for reform because of this.

²¹ Some have argued that understanding instructions is not necessary for a juror to make correct decisions regarding negligence. Because common law is largely based on community norms and evaluating what is "reasonable," a juror could arrive at the correct decision based on innate instincts rather than instructions. However, this does not speak to the civil jury's second task: deciding awards. Correctly assessing awards is supposed to be more mechanical and germane to instructions.

²² 159 F.2d 169 (2d Cir. 1947).

²³ It should be noted here that real world jurors are not explicitly told to follow the Hand Rule, though Viscusi and others argue that intuition of the rule is implicit in what the law regards as "reasonable." According to Kelley and Wendt (2001), "in most pattern instructions on negligence, negligence is defined by using both the concept of ordinary care and the concept of conduct of a reasonably careful person" (Kelley and Wendt 2002, p. 595). That is, real world juries are not usually asked to *explicitly* engage in cost-benefit analysis as Viscusi's experiments do. But, Viscusi's study of experimental juries' treatment of risk when explicitly prompted should directly relate to juries' attitudes toward risk when the cases deal with implicit risk tradeoffs. To economists, every decision has tradeoffs (often implicitly involving risks).

life at a higher rate than the official standard used by official government agencies (Viscusi 2000, p.547). Viscusi believed that jurors saw explicitly conducting risk-analysis as a cold-blooded, reckless act, even though most people at least implicitly conduct risk-analysis on a daily basis. In another study Viscusi (1998) finds that a non-trivial portion (10%) of experimental jurors indicated that they have *infinite* risk-tradeoffs, which means that they are willing to pay all of their wealth for a small incremental improvement in safety *or* they grossly misunderstand the concept of risk tradeoffs altogether. Given the real world consumption behavior of the vast majority of individuals, Viscusi claimed that the latter seems more likely. Unlike jurors, however, Viscusi (2001a) found that, “judges were less prone to erroneous risk beliefs and less subject to the zero-risk mentality” (Viscusi 2001a, p.107), making the case that laymen jurors systematically differ from judges/experts in evaluating risk and trial facts in much the same way as Caplan’s (2002) case that voters systematically differ from economists in policy.

Other research reinforces this juror reluctance to think about tradeoffs. A study conducted by Sunstein, Schkade, and Kahneman (2000) reveals that jurors reject well-established law and economics principles like optimal deterrence, even when they are explicitly asked to decide along these lines.²⁴ Optimal deterrence is the idea that punitive damages should be higher when the probability of detection of harm is low, and vice versa, so punitive damages can efficiently deter torts that may go undetected and

²⁴ Again, like Viscusi, these experiments do not realistically capture what actual jurors are explicitly asked to do. They explore how experimental jurors behave, given a certain context, and draw analogies to real world behavior.

unpunished.²⁵ For example, Polinsky and Shavell (1998) argue that no punitive damages should be awarded in situations where the plaintiff will always be able to identify that the defendant who did the harm (100% detection), but the jury should double the compensatory award if the probability of detection is 50%. Viscusi (2001b) found that even when the instructions draw specific attention to the optimal deterrence formula, and jurors receive tables so that they do not actually have to multiply numbers together, jurors will still reject the rational baseline of optimal deterrence. Moreover, Viscusi worried that, “perhaps most troubling is that these difficulties are not random, but are highly concentrated among particular demographic groups, specifically minorities and the less well educated” (Sunstein et al 2002, p.163).

Ignorance or even mental stubbornness about probabilities may not tell the complete story here. Sunstein et al (2002) also found that 70% of University of Chicago School of Law students, who were well versed in optimal deterrence theory, rejected optimal deterrence theory just as the lay jurors had done in a similar experiment. Thus, given the same incentives as jurors, these participants systematically express their disagreement with the instructed optimal deterrence rule, even when juror ignorance is not a contributing factor. This suggests that jurors may not be simply responding to costs (in this case, the ease or difficulty of implementing instructions), but they could be realizing the marginal benefits of individually expressing personal attitudes as jurors (in this case, disagreement with the idea of optimal deterrence altogether).

²⁵ A more detail discussion of optimal deterrence can be found in Polinsky and Shavell (1998), which includes a formula and jury instructions for real world implementation of this legal standard.

While I only review a handful of studies here, often reflecting the lack of incentives that jurors face, a number of studies see the glass half full with respect to juries. The key difference between the perspective above and these more optimistic studies, I believe, is the distinction between levels and marginal decision-making. In their book *American Juries: The Verdict*, Hans and Vidmar (2007) review a number of experimental and empirical studies of juries and conclude that they are impressed by the *level* of jury conscientiousness and performance. Like Hans and Vidmar, a number of other scholars on this subject view jurors in a positive light. In fact, even the authors of some of the experimental studies mentioned above explained:

“Throughout the present research, we have been impressed by the serious and energetic manner in which citizens performed the difficult legal judgment tasks that are demanded by punitive damages decision. The systematic patterns of behavior that we observed are convincing evidence of the jurors’ conscientiousness” (Sunstein et al 2002, p.241).

Indeed, conscientiousness and the juror’s sense of duty can help explain why jurors show up and complete the task that is asked of them. This need not be incompatible with the present thesis. The position taken here is *not* that jurors show up and simply fall asleep (although they sometimes do) because of scant incentives.²⁶ Juror may indeed show a *level* of participation and conscientiousness that exceed expectations and are deserving of such positive portrayals. But, given that jurors are there and participating (which they have judged the benefit to be greater than the costs), these experimental results suggest that there is little *marginal* incentive to follow instructions as closely as they should,

²⁶ It is relatively easy to get out of jury duty, which suggests that the jurors who do show up are there for a reason. Jurors may have shown up out of civic duty, boredom, getting out of work, or any number of reasons (including expressing their own political beliefs).

think about painful and cold risk tradeoffs, and abide by formulas. In the same vein, *rationaly political* juror decision-making is made at the margin given that the juror is already there and participating; and, the *marginal* benefit to expressing one's political attitudes should exceed its low (zero) marginal cost.²⁷

IV. Empirics of Jury Decisions – The Literature

A large number of studies have revealed that factors beyond the evidence of the case itself serve to explain differences in both criminal and civil jury trial outcomes, namely race, gender, and other socioeconomic juror demographics.²⁸ This section briefly highlights some of the prior empirical work on criminal sentencing, tort awards, and judicial decision-making.

A. Criminal Trial Outcomes

A number of studies have found that factors beyond simply the facts of the case affect criminal trial outcomes, usually called “contextual factors” in the sociology and criminology literature. Some studies have found that a county's racial composition, crime rate, income, unemployment rate, and a variety other factors can help explain variation in sentencing in criminal trials (see Fearn (2005), Johnson (2006), Ulmer and Johnson (2004), Weidner et al (2005))²⁹. However, only a few of them have found that a county's political leanings affect criminal trial outcomes (see Helms and Jacobs (2002), Huang (1996), Pardoe and Weidner (2006), and Johnson et al (2008)); and, they have often

²⁷ Analogously, Caplan's voter also makes her decision to vote “irrationally” at the margin, because a voter's belief that her vote is not decisive would prevent her from showing up at the poll in the first place.

²⁸ See, for example, Bernard (1979), King (1993), Costantini and King (1981), Macoun (1993)

²⁹ All of these four studies controlled for political leanings (usually using percentage voting for the Republican presidential candidate), but none of them found it to be statistically significant in their model.

found that Republicans (or Republican counties) tend to dole out longer prison sentences.³⁰

The choice of data set is probably the chief distinguishing factor among prior studies in this area. Early studies on this topic used aggregated trial data at the state level (e.g. Levine (1983), Bowers and Waldman (1993)) and found that more conservative states tended to give longer sentences on average. A number of studies have used relatively small data sets, consisting of a cross-section of trials from either a single state (e.g. Huang et al (1996) with Georgia, Ulmer and Johnson (2004) with Pennsylvania, Johnson et al (2008) with Pennsylvania) or a single year (e.g. Helms and Jacobs (2002) with 1990's Offender Based Transaction Statistics). Though, only a few studies have used nationally representative panel data to allow for more generalizable results (e.g. Fearn (2005), Pardoe and Weidner (2006), and Johnson et al (2008) all used the 1990-98 State Court Processing Statistics data). However, none of these studies to date have used multiple data sets to confirm that their results hold out of sample, which might help explain why there is substantial disagreement in this literature about which contextual factors consistently affect trial outcomes.

B. Torts, Judges, and Juries

Relatively few empirical studies have examined whether jury characteristics influence tort awards in particular. One such study by Helland and Tabarrok (2003) found a statistically meaningful relationship between race, poverty, and tort awards. Regression results from Helland and Tabarrok's study show that a one percentage point increase in

³⁰ Chapter three finds the opposite effect, where Democrats impose longer sentences.

the black and Hispanic poverty rates corresponded to a 3-10% and a 7% increase in average tort awards respectively. Awards fell by 2-3% with each one percentage point increase in white poverty rates. Similarly, they found a positive relationship between tort awards and a county's black population. These results were broadly consistent across three separate data sets. Other studies (e.g. Eisenberg and Wells (2002)) display complementary results that jury demographics help explain variation in tort awards.

A number of other studies have found that judges behave politically in a couple of ways. Like legislators, elected state judges cater to constituents and appointed judges express their political ideologies. Two empirical studies by Tabarrok and Helland (1999 and 2002) support the view that elected judges respond to political incentives. Among other findings, they have shown that elected judges redistribute wealth from out of state defendants (nonvoters) to in-state plaintiffs (voters), responding to the incentive of favoring constituents' desires in their bids for reelection. Moreover, Sunstein, Schkade, Ellman, and Sawicki (2006) have reported that *unelected* or appointed judges "are political" in the sense that ideologies drive a variety of judicial decision-making. Sunstein et al (2006) found that judges appointed by Republicans and Democrat appointees express distinctive ideologies across rulings in a variety of legal areas (Sunstein et al 2006, p.148). Thus, even judges depart from the intended objective ideal as well, responding to similar incentives as jurors.

Judges political behavior seen empirically seems consistent with Richard Posner's (1993) argument that judges are utility maximizing economic actors like anyone else (Posner 1993, p.1). Federal judges are heavily insulated from outside pressure by a large

fixed salary (which is not tied to their caseload or decisions in any way) and little external accountability (as he notes the extreme difficulty in actually impeaching and removing a federal judge). Hence, given these incentives, Sunstein et al (2006) motivate their empirical work by arguing that, “no reasonable person seriously doubts that ideology...helps to explain judicial votes” (Sunstein et al 2006, p.147). Yet jurors have *even fewer* marginal incentives to withhold their political ideology, as jurors too possess the same kind of insulation as judges but with even less accountability (i.e. jurors cannot be impeached, and their relative anonymity protects them individually from public opinion). Therefore, if the empirical evidence has shown that federal judges respond to the same kind of incentives by expressing their political attitudes, then we might also expect jurors with fewer disincentives to express their political attitudes in a similar environment.

V. Discussion

My model of jury behavior is subtly different than most legal, psychological, and sociological perspectives that I have encountered in my research on this topic. For example, in his book *Jury and Politics*, James Levine (1992) noted that, “the intrusion of political beliefs is normally a *subconscious phenomenon*: jurors tend to construe the facts in a way that produces decisions that they find personally satisfying” (emphasis added) (Levine 1992, p.18). That is, a number of scholars point to the jurors’ *subconscious* political attitudes and their subjective assessment of the facts as the mechanism through which these attitudes affect outcomes. However, my model shows that it may be completely rational for a juror to make an *explicit and conscious* choice to decide a case

based on his or her political (or other relevant) preferences. I am suggesting that *even if jurors were perfectly capable* of analyzing cases objectively and apolitically, it may not be in their own economic self-interest to do so. This differs from simply saying that jurors are political, albeit subconsciously and unavoidably. The empirical ends are largely the same (which is what I am measuring in subsequent chapters), but identifying this mechanism distinguishes this analysis as a distinctly *economic* perspective, rather than one of the other perspectives prevalent in other social science disciplines.

The tradition of jurors departing from the legal ideal is about as old as the jury, and has long been sidestepped like the proverbial 800-pound gorilla in the room. Legal scholars and staunch supporters of the American jury system, Vidmar and Hans, recognize that, “many famous trials are well known precisely because the jury rejected the strict application of the law” (Vidmar and Hans 2007, p. 225). In some of these famous cases (like *Bushnell’s case* above), juries nullify existing law out of political preference or expressing their opposition to the current law. While much of the debate over jury nullification falls outside the scope of this paper, there is one important point to note here. Vidmar and Hans (2007) argue that, “American courts have consistently held that although juries have the *power* to disregard the law because they render general verdict after secret deliberations without having to give reason for their decision, they do not have the legal *right* to do so” (Vidmar and Hans 2007, p. 227). Yet, an economist like Gary Becker might point out that monopolist does not have the *right* to discriminate along racial lines either. Indeed, from a utility maximizing perspective the *power* to discriminate without cost is the economically relevant factor that will boast a prediction

about actual human behavior. Thus, the perspective of this dissertation focuses on this latter approach in order to make an empirical predication about actual juror behavior.

VI. Conclusion

This paper is certainly not the first to suggest the jurors face inadequate incentives to achieve their impartial ideal. I review a host of both experimental and empirical literature that point to many of the shortcomings of the juror (and judge) ideal. This paper does suggest, however, that viewing the juror's incentives through the lenses of economics provides a useful way of thinking about juror behavior and making predictions about real world outcomes. Like Becker (1957) and Caplan (2007), the idea of a *rationaly political* juror explains why individuals may express their personal (political) attitudes or tastes in this (low price of expression) setting, while they may choose to suppress these attitudes in another (high price of expression) setting. For example, jurors may actually be apolitical professionals in the latter setting, like at their office or place of business, but they may indulge in their personal preferences in a jury box setting, similar to the voter or monopolist.

The jury box has long been known as a political institution. In his famous book *Democracy in America*, Alexis de Tocqueville astutely observed that, “the jury is, above all, a political institution, and it must be regarded in this light in order to be duly appreciated” (Tocqueville 1946, p.282). Accordingly, this chapter utilizes a simple model, virtually identical to rational voter models, to underscore the juror's decision between conscientiousness and personal preference. While it is certainly possible to choose the former, this chapter emphasizes the likelihood that a juror may explicitly

choose to express personal preferences and political attitudes in particular. The extent to which this relationship is consistent with real world trial outcomes will be examined in subsequent chapters.

CHAPTER 2 **Political Beliefs and Tort Awards**

This chapter employs two relatively large panel data sets in order to determine whether actual tort outcomes are congruent with the *rationality political* juror hypothesis outlined in Chapter One. The empirical findings in this chapter lend support to notion that jurors could be entirely rational to express their political attitudes in this setting. In particular, this study finds a strong empirical relationship between a jury pool's political leanings (i.e. how they voted in the last presidential election) and tort awards. Using state and time fixed effects (OLS) estimation I find that a one standard deviation (12%) increase in a jury pool's Democratic vote increases tort awards by as much as \$161,243 (about 17%) after controlling for a number of county demographics. Indeed, this effect remains significant after controlling for a number of juror pool characteristics that could also be correlated with tort awards. Consistent results across two separate nationally representative data sets not only ensure more robust results, but also make them fairly generalizable. While more detailed micro data should help tighten the link between political beliefs and tort awards, the existing data used here certainly conforms to the theory of the *rationality political* juror outlined in the first chapter.

The first section discusses the elements of political ideology that will most likely influence jury decisions about tort awards. In the second section I describe the data and econometric models that I use to examine whether political leanings of jury pools

actually affect tort awards. I explore some of the theoretical and practical implications of my empirical results in the third section. And last, I conclude this chapter by summarizing its major arguments and findings.

I. Political Beliefs and Jurors - How do juror political attitudes relate to tort awards?

As ideologies, the Democratic Left and the Republican Right have changed considerably over time across a number of political issues. But on wealth redistribution (particularly, from rich to poor) these two parties have historically remained consistently distinct across a number of issues. In every presidential election since 1980 there have been significant substantive differences between presidential candidates on issues of progressive taxation like the top marginal tax rates and estate taxes. Ronald Reagan ran on a platform of lowering tax rates, particularly flattening out and simplifying the tax brackets, but namely lowering the top marginal tax rate of 70% at the time.³¹ In the most recent presidential races Democrats have favored a more progressive income taxation policy just as they have for decades. The 2008 Democratic ticket favored raising the highest marginal tax rate from 35% to 41%, while the Republican ticket opposes this change and also favored cutting the estate tax from 45% to 15%³² (Wall Street Journal 10/25/2008). Furthermore, George W. Bush campaigned on eliminating the estate tax completely in 2000 and 2004, contra Al Gore and John Kerry. The 2008 Republican ticket also favored a cut in capital gains and dividend taxes which are seen as most

³¹ The “Reagan tax cuts” lowered the highest marginal tax rate from 70% to (eventually) 33% when he left office.

³² The top marginal estate tax rate, 45%, is levied on estate transfers of over \$1.5 million, which of course is seen as disproportionately benefiting the wealthy.

directly benefiting the wealthy (as higher income earners also tend to pay the most capital gains and dividend taxes).

Few believe that presidential candidates will be able to *actually* keep all of their platform promises, but the evidence on income inequality and public perception is striking. According to The Maxwell Poll on Inequality³³, 82% of Democrats believe that “government should do more” about inequality, while only 11% of Republicans agree with that statement, painting a sharp contrast between the views of Democratic and Republican voters on this issue (Stonecash 2007, p. 3).³⁴ The evidence and voter beliefs appear to be consistent with the political rhetoric. Moreover, Bartels’ (2008) book *Unequal Democracy* suggests that Democratic presidents since World War II have presided over economies that have grown faster for lower income groups, while incomes for the wealthy have grown faster under Republican presidents. That is, Bartels finds that income inequality has become more pronounced under Republican presidencies. While the president is certainly not the only driving cause behind income inequality and economic change,³⁵ the correlation reinforces voter perceptions of associating the Democratic Party with progressive taxation and movement toward greater income equality.³⁶

³³ This is a poll conducted by the Jeffrey Stonecash of the Campbell Public Affairs Institute at Syracuse University in 2007.

³⁴ Concern and awareness for inequality is also acutely Democratic. Only 10 percent of Republicans agree that “inequality is a serious problem,” while a vast majority of Democrats feel that it is either a serious or somewhat serious problem.

³⁵ Compared to globalization, technological innovation, and other fundamental economic changes, the President’s role is comparatively quite small.

³⁶ Bartels empirical approach here is controversial, and this paper does not take a stance on the merits or demerits of this particular book. What is important, however, is that the evidence (at least on the surface) appears to conform to political rhetoric and public perceptions.

Attitudes toward wealth redistribution spill over to a number of policy issues, namely tort reform. In general, trial lawyers have traditionally supported the Democratic Party in part for their stances against various tort reforms, which they argue disproportionately benefit wealthy individuals and corporations. Republicans have traditionally favored tort reforms like limits on punitive damages, non-economic damages (i.e. emotional pain and suffering, etc), and contingency fees. These reforms most directly benefit the wealthy defendants because these individuals or businesses may have the ability pay damages exceeding the proposed caps in damages.³⁷ The *New York Times* reported that trial lawyers in 2000 “have been spending huge amounts of money from the tobacco settlement to keep [George W. Bush] and other Republicans from being elected,” because trial lawyers see Republicans like Bush “not only as a threat to their livelihood, but also to their ability to hold corporate America legally accountable for its actions” (New York Times 3/23/2000). Though tort reform’s issue saliency waxes and wanes from election to election, it remains an issue that largely falls along the ideological lines of wealth redistribution.

Conscious and subconscious political attitudes toward wealth redistribution likely play the most direct role in juror decision-making because tort cases themselves involve wealth redistribution by a third party (i.e. the jury). A number of anecdotes and press reports of outlier trials point to what Hans (1998) described, “a popular image portrays civil juries not as evaluators of the evidence, but as Robin Hoods redistributing wealth.”

³⁷ Though, it is frequently argued by Republicans and tort reform advocates that these caps would also bring down insurance premiums and product prices that take into account the possibility of a large liability lawsuit. Hence, the indirect effect of tort reform could conceivably help lower income individuals too.

While many (if not most) cases do not involve a poor plaintiff against a rich individual or corporation, a non-trivial number of cases do, which often involve stunningly large sums. If Democrats have expressed politically their greater willingness to redistribute wealth (and conversely, Republicans have expressed less willingness to redistribute wealth), and if these views make individuals feel good in the sense that they have *preferences over beliefs*, then we should expect *a priori* these same individuals to incorporate these views into their decision-making process as jurors when the marginal cost of doing so is zero.³⁸

This may also be a subconscious exercise as Democrat and Republican jurors interpret evidence and testimony in line with their prior personal attitudes. The first chapter noted that this is the most frequently noted mechanism in the social science literature through which personal attitudes affect trial outcomes. For example, some studies have found such instances where individuals who generally oppose the death penalty interpret a variety of evidence and testimony much differently than those who are open to the possibility of a death penalty (Ellsworth in Hastie et al 1993, p.53). Hence, even if personal political views affect how individuals subconsciously interpret evidence and testimony, then jurors will indeed act *as if* they are *rationaly political*, which should be empirically indistinguishable from the explicit model in most real world data.

While attitudes toward wealth redistribution may be the most direct link between political ideology and jury decisions, it is most likely not the only link. The two predominant American ideologies are quite multifaceted in the sense that it is

³⁸ Tullock (1971) argued that, “if I possess both the selfish desires to spend my own money and a feeling that I must be charitable, I am wise to vote charitably and act selfishly.” He argued that certain individuals may be more willing to redistribute wealth if it was not seen as not directly coming from her own pocket.

increasingly difficult to generalize about these extremely diverse groups. Indeed, separate sects within an ideology may reach similar conclusions but for different reasons. So attitudes toward wealth redistribution may be only one of many political attitudes that jurors may express, either consciously or subconsciously, when assessing tort awards.

II. Empirics of Jury Decisions – Tort Trials

A. Data and Methodology

To examine whether actual jurors have tendencies to be *rationaly political* (i.e. whether their political attitudes affect tort awards) I use two separate data sets containing detailed information about thousands of U.S. tort cases from all parts of the country. The first data set, the Civil Justice Survey of State Courts (CJS), is a product of the National Center for State Courts and the Bureau of Justice Statistics with assistance of the U.S. Bureau of the Census.³⁹ This data set contains a stratified random sample of civil cases from 46 of the 75 most populous counties in the U.S. from three years (1992, 1996, 2001)⁴⁰ that is specifically designed for academic and professional research. As these counties account for nearly half of all civil filings in the U.S., results obtained from this data are reasonably generalizable. I use only the tort cases for this study. For each tort case, the data include date and location of the trial, winners and losers, compensatory and punitive damage awards, and a number of other descriptive characteristics of the trial and litigants. While this data is collected as a cross-section for each of the three years, I

³⁹ It is distributed by the Inter-University Consortium for Political and Social Research, and can be downloaded directly from their website.

⁴⁰ Actually, the 1992 and 1996 studies contain cases from 45 counties. The 2001 study contains 46.

pooled the three years into a single panel. In total, this data set includes 8,297 tort cases that yielded a verdict for the plaintiff.

Second, I use the Jury Verdict Research's (JVR) most recent Personal Injury Verdicts and Settlements data set. From this data set I use the same 46 counties used in the CJS data set to maintain continuity across data sets; but, this data contains cases over a broader range of time (each year from 1985 to 2004). Because regional verdict reporters compile the data, the collection procedure is less transparent than the CJS data and may differ across regions, which is generally viewed as a weakness for academic research usage (Tabarrok et al 2005, p.213). However, Helland and Tabarrok (2003) have used this data in part because the JVR sample is much larger than the CJS data and contains more detailed information about each case. For each tort case the data set includes information on awards, trial date and location, specific injuries, plaintiff's age and gender, expert witnesses, and a number of other variables. In total, this data set includes 26,840 tort cases that yielded a verdict for the plaintiff in these particular 46 counties.

My dependent variable is the total damages awarded to the plaintiff at trial. I use total damages (i.e. compensatory damages + punitive damages) for a number of reasons. Relatively few cases award punitive damages, which tend to be thought of as the more flexible component of the jury award. And, experimental evidence suggests that:

“Jurors may have difficulty in separating the different legal concepts that apply to punitive and compensatory damages and therefore may treat them as interchangeable, especially when the plaintiff is the recipient of a potential punitive award...Similarly, negligence (relevant to compensatory damages) and recklessness (relevant to punitive damages) may be confused in the minds of the jurors” (Sunstein et al 2003, p.90).

Not only is the total award the most crucial aspect with respect to decision-making from the plaintiff's perspective, but jurors tend to lump the two (compensatory and punitive) damages together conceptually.⁴¹

Ideally, to study jurors' political attitudes I would use each jury's political or ideological composition from each individual tort case in order determine whether individual juror attitudes are correlated with the assessed award. But, no such detailed data exists. Jurors are largely anonymous to the public. However, *juror selection from the jury pool* is transparent and random, which conveniently allows for reasonable estimation of what the average, representative jury looks like. Following the Juror Selection and Service Act of 1968 and *Taylor v. Louisiana*⁴² (1975) the United States Supreme Court has declared that jury pools must be a fair and representative cross-section of the community (Jonakait 2003, p.117). As a result, jurisdictions have since randomly chosen potential jurors from registered voter rolls, which sometimes are supplemented with lists of state taxpayers, licensed drivers, state unemployment recipients, and telephone books (Jonakait 2003, p.125). Most states have also dramatically reduced the number of exemptible occupations and groups. Hence, the average jury should possess socioeconomic characteristics of the community, more or less.⁴³ And, it is also likely that

⁴¹ Also, some awards at the extremes were dropped from both data sets. Awards exceeding \$1 billion dollar were dropped, which lowered the tort award averages slightly. Awards totaling zero were also excluded (it is not clear that nothing is actually a "win," since the plaintiff goes home with the same amount if he or she loses), which raised the tort award averages slightly. However, dropping these few observations does not fundamentally alter any results reported in this paper.

⁴² 419 U.S. 522 (1975)

⁴³ The *voir dire* or jury selection process can change this somewhat. Attorneys from both sides may use peremptory challenges to distort this cross-section a bit. But, the number of peremptory challenges is typically limited. And, the Supreme Court has ruled that peremptory challenges cannot be made on race

there is a strong correlation between those who actually show up for jury duty and those who vote, given the civic duty nature of both activities. Thus, I use each county's most recent presidential election vote (percentage) tally to proxy for the representative jury's political attitudes.⁴⁴ For example, for a 2001 tort case in Orange County, FL, I assume that the jury pool and thus the average jury's political attitudes lean 55:40% Republican to Democrat, as 55% of Orange County voters selected George W. Bush and 40% selected Al Gore in the 2000 election. Because the United States has traditionally been a two-party system, votes for Republicans are almost perfectly negatively collinear with votes for Democrats. Hence, I will (arbitrarily) assign the county's Democratic vote as the variable quantifying political leanings of jurors.⁴⁵

A number of county demographics were added to these data sets to control for relevant socioeconomic attitudes, which prior studies have found shape juror attitudes and trial outcomes. Helland and Tabarrok (2003) made the case for county racial composition (i.e. percent black, white, and Hispanic) and income (or poverty rates), as summarized in the previous section of this paper. Other studies have suggested that various socioeconomic variables may affect trial outcomes, namely unemployment, population density, educational attainment (percent over 25 with a bachelor's degree), and age/elderly population (percent of county population over 65), and industry

and gender grounds alone. Attorneys who overtly discriminate face serious consequences, which ensure that if there is a departure from the community cross-section occurs, then it is relatively small.

⁴⁴ The presidential election produces highest turnout in U.S. elections and is therefore more representative of the jury pool. This is also not the first study to use this variable to examine the judicial system. Sobel and Hall (2007) use a version of this variable in a study finding that election outcomes are correlated with judicial system quality.

⁴⁵ Detailed and well-organized county level election data was purchased from Dave Leip at www.uselectionatlas.org/

employment (percent employed in agriculture, manufacturing, government). All of the above variables were obtained from the U.S. Census website. Because the full U.S. Census is only taken every ten years, and the data is yearly (except the CJS data), county demographic variables were paired with the nearest census. Specifically, trials occurring from 1985 to 1994 were paired with corresponding 1990 census data; and, trials occurring 1995 to 2004 were paired with the 2000 census data.

Lastly, the JVR data contains specific descriptions of the primary injury to the plaintiff for each tort case,⁴⁶ which should help explain variation in tort awards. Because the injuries reference specific body parts, illnesses, etc., I classified injuries into seven general categories: 1) death, 2) back and body, 3) limbs, 4) head, 5) internal, 6) psychological/emotional, and 7) other. A more detailed description of each category can be found in the appendix. The injury information is the only independent variable available that refers to facts of the actual trial itself.

Tables 2.1 and 2.2 show both data sets' variable means and standard deviations, from which there are many similarities but some key difference between data sets. Both data sets sample from slightly left leaning Democratic counties on average, where 52% of both samples' voters cast ballots for the Democratic candidate. Also, many of the demographics averages are similar across data sets, namely income, unemployment, industry employment composition (agriculture, manufacturing, and government), elderly population, and population with a bachelor's degree. But, other differences remain. The JVR data set samples more cases from more urban areas (i.e. a slightly higher population

⁴⁶ Unfortunately, only a few cases in the CJS data set include the primary injury.

density), and therefore has slightly higher minority racial composition averages and average poverty rate. More starkly, the JVR sample has much higher average awards than the CJS data set, \$951,539 compared to \$531,579 respectively. Coinciding with this higher mean, the JVR sample has much higher variation across awards with a standard deviation of \$8.8 million as compared to CJS's \$3.6 million. The two data sets have roughly comparable medians (CJS, \$45,000; JVR, \$63,669), but the JVR sample contains a higher proportion of “big” cases at the upper end. The JVR sample contains 3,581 cases where one-million dollars or more was awarded (roughly 13%), while the CJS sample contains only 675 cases awarding one-million dollars (roughly 8%). Also, because of this sizable variation in total awards levels (and particularly the larger variance at the top end of awards), I apply a logarithmic transformation to the awards variable, which will be used as the dependent variable in my models below.

B. Models and Results

Like many econometric studies, this paper employs a number of models across different data sets in an attempt to demonstrate the robustness of the statistical relationship between political attitudes (as expressed through presidential election voting) and tort awards. If jurors are in fact *rationaly political*, then the theory should make relatively consistent predictions across multiple data sets. The models in this section range from a basic single variable ordinary least-squares regression to a multivariate state and time fixed effects regression. In all regressions I use robust heteroskedastic-consistent errors to control for heteroskedasticity. Tables 2.3 and 2.4 show the regressions' results.

$$(2.1) \quad \log(\text{totalverdict}_i) = \beta_0 + \beta_1 \text{dem}_i + \varepsilon_i$$

All regressions in tables 2.3 and 2.4 show a strong (and highly statistically significant) relationship between political attitudes and tort awards across both data sets. The most basic model, equation (2.1) in both tables, shows that a one-percentage-point increase in the jury pool's Democratic vote increases awards by 3.2% (\$17,063) in the CJS data set and 2.9% (\$27,309) in the JVR data set.⁴⁷ The similar coefficient estimates across both data sets in this basic model depict a general tendency consistent with the theory of the *rationaly political* juror, but as explained in the literature review, a number of important juror characteristics are omitted in this basic model. And, as roughly indicated by the low R^2 (.036 and .020), this regression does not explain very much about the variation in tort awards.

$$(2.2) \quad \log(\text{totalverdict}_i) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{pctpoverty}_i + \beta_3 \text{pctblack}_i + \beta_4 \text{pcthispanic}_i + \varepsilon_i$$

Since the basic model controls for no other factors that may be correlated with tort awards, the basic model's coefficient estimate is likely biased. As Tabarrok and Helland (2003) pointed out, factors like race and poverty also affect tort awards. Hence, regression (2.2) in both tables incorporates these controls into the model. Neither political coefficient changed dramatically after controlling for these variables, as a one-percentage-point increase in the jury pool's Democratic vote now increases awards by about 3.1% (\$16,638) in the CJS data set and 2.5% (\$23,639) in the JVR data set.⁴⁸

⁴⁷ Coefficient estimates have t-statistics of 17.64 and 24.14 respectively, and are significant at the 1% level.

⁴⁸ Coefficient estimates have t-statistics of 13.59 and 16.60 respectively, and are significant at the 1% level.

Consistent with their study, regression (2.2) also shows that tort awards are increasing in poverty rates; but, the magnitude in the JVR data set is about three times greater than the poverty rate coefficient estimate in the CJS data set (9% to 3%, respectively). Regression (2.2) also suggest that the black population negatively impacts tort awards (CJS, 1%; JVR, 3%), while increases in the Hispanic population slightly raises tort awards (.05%) in the CJS data but has no statistically significant effect in the JVR data set. It should also be noted here that many of the subsequent control variables are correlated with political attitudes, and this should be particularly obvious with race and poverty variables. This multicollinearity explains the higher standard errors (lower t-statistics) in subsequent models.

$$(2.3) \quad \log(\text{totalverdict}_i) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{pctpoverty}_i + \beta_3 \text{pctblack}_i + \beta_4 \text{pcthispanic}_i \\ + \beta_5 \text{incomepercapita}_i + \beta_6 \text{pctump}_i + \beta_7 \text{pctagriculture}_i + \beta_8 \text{pctmanufacturing}_i + \\ \beta_9 \text{pctgovt}_i + \beta_{10} \text{popdensity}_i + \beta_{11} \text{pctold}_i + \beta_{12} \text{pctbachelors}_i + \varepsilon_i$$

To isolate the effects of political attitudes on tort awards further, I incorporate a number of other relevant socioeconomic controls into regression (2.3). While these controls are often correlated with party affiliation, the goal is to hold socioeconomic characteristics constant in order to isolate the effect of political attitudes on tort awards. Socioeconomic status here can be thought of as including income (with unemployment or poverty status), education, race, age, profession, and the characteristics of one's community (e.g. how densely populated or urban one's community is). Thus, holding these socioeconomic factors constant, regression (2.3) delivers a virtually identical coefficient estimate for the jury pool's Democratic vote in the CJS data set, and a slightly

lower coefficient estimate in the JVR data set. In this model a one-percentage-point increase in the jury pool’s Democratic leanings increases awards by 3.1% (\$16,532) in the CJS data set and 2% (\$19,411) in the JVR data set.⁴⁹ Or, put another way, if two jury pools have essentially the same socioeconomic characteristics but different political attitudes, this model predicts that the more Democratic leaning jury will award more to the plaintiff.

$$(2.4) \quad \log(\text{totalverdict}_i) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{pctpoverty}_i + \beta_3 \text{pctblack}_i + \beta_4 \text{pcthispanic}_i \\ + \beta_5 \text{incomepercapita}_i + \beta_6 \text{pctump}_i + \beta_7 \text{pctagriculture}_i + \beta_8 \text{pctmanufacturing}_i + \\ \beta_9 \text{pctgovt}_i + \beta_{10} \text{popdensity}_i + \beta_{11} \text{pctold}_i + \beta_{12} \text{pctbachelors}_i + \beta_{13} \text{state}_s + \beta_{14} \\ \text{time}_t + \varepsilon_{ist}$$

The fourth model, (2.4), controls for unobserved heterogeneity across states and time that affect tort awards. States have different laws, legal procedures, as well as any number of differences outside the legal realm that contribute to variation in tort awards. With state and time fixed effects however, regression (2.4) controls for these unobserved influences on tort awards that vary across states and time without having to specify the source of the heterogeneity, so the effect of the jury pool’s political attitudes is identified from its variation within a state and over time.⁵⁰ Thus, after controlling for the “kitchen sink” so to speak, a one-percentage point increase in a jury pool’s Democratic leanings increases tort awards by 2.1% (\$11,163) in the CJS data set and 1.4% (\$13,604) in the JVR data set.⁵¹ Moreover, a one standard deviation increase (about 12% in both data sets)

⁴⁹ Coefficient estimates have t-statistics of 8.92 and 3.51 respectively, and are significant at the 1% level.

⁵⁰ See, for example, Friedberg (1998) for an excellent application of state and time fixed effects.

⁵¹ Coefficient estimates have t-statistics of 3.36 and 3.58 respectively, and are significant at the 1% level.

in a jury pool's Democratic vote corresponds to a \$137,863 and \$161,243 increase in tort awards in the CJS and JVR data sets respectively.

$$(2.5) \log(\text{totalverdict}_i) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{pctpoverty}_i + \beta_2 \text{pctblack}_i + \beta_3 \text{pcthispanic}_i + \beta_4 \text{incomepercapita}_i + \beta_5 \text{pctump}_i + \beta_6 \text{pctagriculture}_i + \beta_7 \text{pctmanufacturing}_i + \beta_8 \text{pctgovt}_i + \beta_9 \text{popdensity}_i + \beta_{10} \text{pctold}_i + \beta_{11} \text{pctbachelors}_i + \beta_{12} \text{injuries} + \beta_{13} \text{state}_s + \beta_{13} \text{time}_t + \varepsilon_{ist}$$

The final regression, (2.5) in Table 2.4 incorporates the primary injuries into the model, but is not replicated in the CJS (Table 2.3) because of a lack of injury data in that data set. There are a couple key takeaways from this final model. First, controlling for injuries may be a proxy for controlling for one dimension of ambiguity in the award process. That is, a broken limb is relatively straightforward with respect to damages and pain and suffering, especially compared to death or other more serious injuries. It is likely that many jurors themselves have suffered a broken limb and have an intimate sense of empathy required to make consistent judgments about damages in these cases. But, when the nature of damages is more ambiguous, one might expect communal sentiments to play a larger role (e.g. how much is a life worth?). After controlling for this ambiguity associated with different injuries, the coefficient estimate remains approximately the same, suggesting that the underlying ambiguity may was not driving the previous results. Second, the jury pool's political coefficient estimate has hardly changed (i.e. it remains approximately 1.4%), and perhaps more strikingly, the R^2 has risen dramatically (more than doubled) as compared to the other regressions. Not surprisingly, the variables that account for the trial's actual facts also help explain a lot of the variation in tort awards.

Though impressively, without much specific data about the facts of the particular trials, regression (2.4) explains a non-trivial (.107) amount of this variation, which certainly departs from the legally prescribed ideal of the ‘impartial’ juror. While this departure may not be entirely surprising to many, the sheer magnitude of this departure presented in this study remains striking.

III. Implications of the Data

These findings have a number of theoretical and practical implications. From a law and economics perspective, higher awards in Democratic counties will change the marginal behavior of rational individuals by inducing them to take relatively more precaution. According to the Hand Rule, individuals are negligent “if the marginal cost of his or her precaution [or burden, B] is less than the resulting marginal benefit [which is the marginal probability of harm, p, and the cost of harm, L]” (Cooter and Ulen 2003, p.334). And, individuals should not be found negligent when $B \geq p \cdot L$.⁵² Hence, assuming similar risk preferences, rational individuals in more Democratic counties should take relatively more precaution if there is a liability premium in these counties, while individuals in more Republican leaning (i.e. less Democratic) counties should take relatively less precaution. For example, a rational response to these findings might be that a driver⁵³ should drive slower (or speed less) in Democratic leaning counties, *ceterus*

⁵² As noted previously, jurors are not instructed to explicitly use the Hand rule to determine negligence. The Hand rule is only legally relevant insofar as the instructions or the jurors themselves implicitly incorporate this definition into what a “reasonable person” would do.

⁵³ Or, more accurately, an uninsured driver who would be personally liable in the case of an accident would be a better example. Other examples could include common defendants in tort liability cases, like insurance companies who may find ways to impose higher premiums on drivers and, say, doctors in Democratic leaning counties.

paribus. As a result, Democratic counties may also have fewer accidents altogether, *ceterus paribus*.

From a litigation and settlement standpoint, higher awards in Democratic counties raises the return to bringing suit in those counties. So, of the accidents that take place, a relatively higher proportion of accidents should bring suit in response to this relatively higher return in Democratic leaning counties. Moreover, litigators interested in forum shopping may also try to exploit sizeable premiums, involving a further increase in litigation in Democratic leaning counties. But, most cases actually settle out of court. Because the threat values (i.e. what the plaintiff would expect if she wins) should be higher in Democratic counties, therefore settlements should also be higher in Democratic counties. Further research could bolster these predictions.

IV. Conclusion

To summarize, this study finds a robust positive correlation between a jury pool's Democratic leanings and tort awards across two separate data sets. After controlling for a number of socioeconomic demographics in order to isolate the effect of political beliefs, the fixed effects OLS regression (i.e. regression 2.4) estimates that a one standard deviation increase in a jury pool's Democratic vote increases tort awards by \$137,863 (in the CJS data) and \$161,243 (in the JVR data). When primary injury variables are incorporated into the model (in the JVR data), the model explains much more variation in tort awards (i.e. much higher R^2), but the coefficient estimate on the jury pool's political leanings remains essentially unchanged. While there is a lot of variation in tort awards that remain unexplained, these empirical models suggest that a significant portion of tort

awards are determined by demographics and personal attitudes of the jury pool from which each jury should be a fair cross-section.

Empirical studies of tort awards may improve the efficiency of the civil justice system by bringing both sides' demands closer together. Oftentimes parties go to trial (as opposed to settle) because one party's estimation of damages departs significantly from the other's. This narrows the bargaining range potentially to a point where no mutually advantageous deal can be reached due to differing estimations of trial outcomes. Thus, a better understanding of the range of trial outcomes and the jury decision-making process may actually bring parties' demands closer together so settlement (i.e. the less costly adjudicating process) is more likely. And, taking political beliefs into account may facilitate this bargaining process and the overall efficiency of the legal system.

CHAPTER THREE **Political Beliefs and Criminal Trial Outcomes**

This chapter examines the extent to which actual criminal outcomes reflect the political leanings of the jury pool (or the county/location of the trial). During each election cycle issues concerning the criminal justice system continually reemerge as divisive political topics, providing reason to suspect that a great number of individuals have strong feelings about these issues. Chapter One makes the case that jurors (and judges) may choose to be *rationaly political* as they decide trial outcomes. Like the previous chapter, I use two large nationally representative panel data sets to examine the relationships between political beliefs, sentence length, and the probability of conviction. I find robust evidence that jury pools with Democratic leanings are less likely to convict a defendant in both jury and bench trials, but given a conviction, they deliver longer sentences. These findings are consistent with the notion that jurors could be entirely rational to express their political attitudes in this setting.

This chapter is divided into four sections. First, I briefly explain the relevance of political attitudes to criminal law. In the second section I describe my data, methodology, models, and results. Third, I discuss some of the key results, reconciling a number of interesting findings. In the fourth section I conclude by summarizing the main findings of the chapter, and discuss them in the context of the previous chapters.

I. Political Beliefs and Jurors - How do juror political attitudes relate to criminal trials?

Issues concerning crime resurface each election cycle, often dividing Republicans and Democrats on a number of core issues. Capital punishment, drug crime/legalization⁵⁴, and ‘toughness on crime’ in general are common focal points of debate during election season and divide the two ideologies. Indeed, a number of presidential candidates have made “law and order” a critical part of their campaigns since 1964.⁵⁵ One memorable example of this was the 1988 George H.W. Bush campaign’s famous “Willie Horton ads,” which depicted a convicted murderer who committed armed robbery and rape while on a Massachusetts weekend furlough program, a program supported by then Governor and presidential candidate Michael Dukakis. Bush used this example to make the case that the Democratic candidate was weak on crime (New York Times 10/25/1988), presumably appealing to a conservative base that supports this hard line on crime.⁵⁶ Hence, the prevailing political stereotype is that liberal Democrats are relatively “soft” on crime, while conservative Republicans are “tough” on crime. As a result, juries with Democratic leanings may require a higher standard of proof than Republican leaning juries in order to convict, given the Republican appeal to “toughness.”⁵⁷

⁵⁴ According to a 2009 ABC News/Washington Post poll, about half of Democrats (49%) are in favor of marijuana legalization, while only a quarter (about 28%) of Republicans favor its legalization. For more details, see <http://www.abcnews.com/pollingunit>

⁵⁵ See Davey (1998) for a more detailed description about how crime issues are used in elections.

⁵⁶ Of course, he was also trying to appeal to independents who may view Dukakis’ policy in a negative light after hearing of this example. Independents may interpret this exception as simply as a blunder, while conservatives (including the Bush campaign) may interpret this as a direct result of being “soft” on crime.

⁵⁷ Helms and Jacobs (2002) pointed out that conservatives are more likely to emphasize individual responsibility with respect to crime, while Democrats may emphasize more social responsibility. The

Some real world data has provided support for these stereotypes, potentially reinforcing voter perceptions about politics and crime. For example, Republicans tend to spend more than Democrats on police, courts, and corrections after attaining political office.⁵⁸ Other studies have shown that increases in Republican Party strength, at both state and national levels, have increased the number of police officers and overall prison population nationwide (Jacobs and Helms 1996, p.323). Moreover, as pointed out in the first chapter, a few of studies similar to this one have found that Republican counties tend to have harsher prison sentencing (e.g. Helms and Jacobs (2002), Pardoe and Weidner (2006), Huang et al (1996), and Johnson et al (2008)). Therefore, there is ample precedent for political leanings affecting criminal trial outcomes.

II. Empirics of Jury Decisions – Criminal Trials

A. Data and Methodology

To explore the extent to which political attitudes affect criminal trial outcomes, I use two separate large panel data sets, which include detailed information about thousands of criminal trials from around the United States. The first data set, State Court Processing Statistics⁵⁹ (SCPS), tracks felony cases filed in approximately 40 of the nations 75 most populous counties biannually from 1990 through 2004.⁶⁰ The 75 most populous counties account for about half of all reported crimes each year in the United

result could generate less sympathy for circumstances by conservatives, and a lower standard of proof to convict.

⁵⁸ See Caldeira and Cowart (1980).

⁵⁹ This data was previously known as the National Pretrial Reporting Program, and is assembled by the Bureau of Justice Statistics in the United States Department of Justice. It is freely available on ICPSR's website.

⁶⁰ Data was collected every other May from 1990 to 2004 until the final disposition, or one year has elapsed.

States and more than a third of the U.S. total population. For each criminal trial, this data set includes information on a number of individual characteristics of the accused (e.g. gender, race, and age), the crime (e.g. whether it is a violent, property, drug, or other crime, how many charges the accused is facing,), and a number of other case characteristics. In total, this data includes 86,372 trials, which includes 1,938 jury trials specifically. The data set also includes bench trials and pleas, which will also be examined later in this chapter.

The second data set, National Judicial Reporting Program (NJRP), consists of a sentencing and trial characteristics for thousands of felony trials from nationally representative cross-sections of counties.⁶¹ Collected biannually from 1986 to 2004, the Bureau of Justice Statistics has sampled case information from approximately 300 counties, which were selected to be nationally representative.⁶² Much like the SCPS data, each criminal trial in the NJRP data set includes information on a number of individual, crime, and case characteristics. However, besides sampling a larger cross-section of countries, this data set differs from the SCPS data in a number of ways. First, it only includes trials that resulted in conviction, which precludes this data from estimating the probability of conviction. Second, it contains a much larger number of observations, some 2,611,241 cases (trials and pleas), and 51,701 jury trials.

These data sets provide information on two different trial outcomes that will be examined in this chapter: the decision to acquit or convict and the corresponding sentence

⁶¹ I pooled each cross-section from 1986 to 2004 into one large panel data set.

⁶² Not all years sampled exactly 300 counties (only in 2002 and 2004). From 1986 to 1994, only 100 counties were sampled. From 1996 to 2000, 344 counties were sampled.

length. The convict/acquit dependent variable will be a “1” if the verdict is to convict, and a “0” if the verdict is to acquit; and, this will be used in logit models to determine marginal effects on the probability to convict. The other dependent variable, sentence length, is simply the incarceration term (in months) determined in the case, either jail or prison time behind bars.⁶³ While juries always decide acquit/convict in jury trials, they only decide sentence length in some states (e.g. Arkansas, Missouri, Oklahoma, Texas, and Virginia). However, on average they have some *de facto* discretion over sentence length by deciding which charges to convict (i.e. in both data sets the average number of charges is around two), sometimes carrying mandatory sentencing guidelines which limits the discretion of the judge.⁶⁴

To determine whether political attitudes affect trial outcomes, I use the same political independent variable as explained in the previous chapter. Because detailed information about real world jurors do not exist for these cases, I use the corresponding information of the jury pool from which jurors are randomly selected (i.e. the county in which the case was held).⁶⁵ As with the previous chapter’s data sets, each trial observation also includes the date and county in which the trial occurred in both the SCPS and NJRP data sets. Hence, for each trial observation I use the county’s percentage

⁶³ In most cases, a maximum incarceration term is reported without a minimum sentence. The SCPS data does not report a minimum term at all. However, in the cases that report a maximum and a minimum (like 12 to 24 months), I use the average (18 months) as the sentence as Helms and Jacobs (2002) have done in their study. Also, I code life sentences as 99 years (or 1188 months) as Helms and Jacobs (2002) did. However, coding them as 50 years (as some other studies have) does not really alter my general results.

⁶⁴ While the jurors may not know the details of mandatory terms and sentencing guidelines, there is probably a general sense of which charge is more severe. For example, in many drug cases defendants are charged with possession and intent to traffic, with the latter obviously being more serious. A more lenient jury may only vote to convict on the former, most likely resulting in a lower sentence (even if they do not actually decide the sentence).

⁶⁵ See Chapter Two for a more detailed discussion of the political explanatory variable.

vote for the Democratic presidential candidate as the political explanatory variable.⁶⁶ Because the presidential election traditionally receives the highest turnout, it is the most likely electoral variable to approximate the political leanings of the jury pool for a given election cycle.

As with the tort data, I supplement the trial data with a number of the corresponding county/jury pool demographics to control for relevant socioeconomic attitudes and other factors that may be related to criminal trial outcomes. A number of prior studies have controlled for factors like racial composition (i.e. percent black and percent Hispanic), income or economic status⁶⁷ (i.e. income per capita), unemployment, population density, employment industry, education (percent with a high school diploma and percent with a bachelors degree), and the crime rate.⁶⁸ All of this data was obtained from the U.S. Census website, and as with the tort data I paired the demographic data with the nearest corresponding census. For example, if the trial took place in 1994, I would use the county demographics from the 1990 census. These variables help control for a variety of socioeconomic factors in an effort to isolate the effect that political leanings have on trial outcomes.

Lastly, both data sets contain a number of individual, crime, and defendant characteristics that should help explain variation in trial outcomes. For most trials, each data set includes information about gender, race, age, type of crime, and the number of

⁶⁶ As with the tort data, I use the last election since the trial date. For example, if the trial took place in 2002, then I used the 2000 election data.

⁶⁷ The poverty rate is not used in this chapter. This variable was very highly correlated with income and a number of other explanatory variables, but does not improve the model's fit. Leaving this variable out, however, does not fundamentally alter the results in this chapter.

⁶⁸ A more detailed description of the variables I use can be found in the appendix.

charges that have been alleged.⁶⁹ The type of crime is classified into four main categories: violent, property, drug, and other. The details about how these variables are specifically coded are in the appendix. These individual characteristics, to the extent that they can, help control for factors directly relevant to the case and its subsequent outcome.

Tables 3.1 and 3.2 provide the summary statistics for both data sets, highlighting a number of key similarities among them.⁷⁰ Both data sets have predominately male defendants (about 93%) at an average age of about 30 years old. A slight majority of cases involve black defendants. And, the most common felony charge is for violent crime. Like the tort data sets in the previous chapter, these data sets draw more from (slightly) left leaning Democratic counties, where 52% to 54% voted Democratic in these samples. Both data sets also have similar means for the jury pool's income per capita, unemployment rate, employment sector make-up (agriculture, manufacturing, and government employment), educational attainment, and crime rate. Despite sampling from a larger cross-section of counties, the NJRP data set looks quite similar to the SCPS.

Tables 3.1 and 3.2 also show that these data sets have some key differences. The average sentence length is approximately 170 (about 14 years) months in the SCPS data and 263 months (about 22 years) in the NJRP data. Some of this difference may be attributable to a higher percentage of violent crimes sampled in the NJRP data set (58%) as compared to the SCPS (52%), which subsequent regressions show that this increases

⁶⁹ The data sets include a number of other details about the individual case, but these are the only variables that are common for most of the observations (i.e. many of the other variables are blank for a large number of observations).

⁷⁰ The summary statistics reported in tables 3.1 and 3.2 are from the jury trials only, though the overall summary statistics are very similar the ones reported here (with a couple exceptions).

sentence length substantially. In addition, the NJRP data also has fewer drug and property related crimes, and the racial composition of the jury pool is somewhat different across data sets.

B. Models and Results

To determine the impact of political attitudes on criminal trial outcomes, I use five ordinary least squares and logit models with state and year fixed effects. For the decision to convict, I use logit models with state and year fixed effects in order to estimate how a change in Democratic leanings will change the probability to convict.⁷¹ And, I use state and year (OLS) fixed effects models in order to estimate how changes in Democratic leanings will impact the sentence a convicted felon receives. All models use robust heteroskedastic-consistent errors to control for any heteroskedasticity.⁷² This section will proceed a bit different than the previous chapter as I 1) describe my models generally and 2) proceed to summarize the estimation results.

1. Description of Models

The simplest model I use to examine the impact of political beliefs on criminal outcomes (model 3.1 below) utilizes a single explanatory variable along with state and time fixed effects. Both data sets are panels of data collected over an extended period of time from a number of different states across the United States. Each state may have different laws, legal procedures, legal culture, and any number of factors that contribute to differences in conviction rates and sentence length. In fact, these sources of

⁷¹ Both logit and probit models yielded nearly identical results across the board. However, I report only the logit estimates here.

⁷² Though I do not report the results here, clustered standard errors by county or by state do not significantly alter the results reported in this paper.

heterogeneity may also change from year to year based on new legislation or trends. Hence, I use state and year fixed effects in the proceeding models to control for unobserved heterogeneity across states and time so that the explanatory variables' effects are identified from its variation *within* a state and year. While this simpler model is usually a good starting point since it captures a general tendency between the dependent and independent variables, it potentially omits a number of important variables discussed below.

$$(3.1a) \text{ Prob}(\text{convict}_i = 1 | \mathbf{x}) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{state}_s + \beta_3 \text{time}_t + \varepsilon_{ist}$$

$$(3.1b) \text{ sentence}_i = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{state}_s + \beta_3 \text{time}_t + \varepsilon_{ist}$$

A number of studies have shown that the most important determinants of trial outcomes are the objective facts in the case. After reviewing a number of experimental and empirical studies on juries, Vidmar and Hans (2007) conclude that while some jurors have personal biases and prejudices, juries predominately “decide cases on merits of the evidence” and the facts of the case (Vidmar and Hans 2007, p. 340). Unfortunately, no detailed data have been collected about the quality and quantity of the evidence for each of the cases. So my second and third models attempt to incorporate the basic facts about the trial, identifying personal characteristics about who is on trial, and for what they have been charged. Hence, I incorporate a defendant's gender, race, and age (in model 3.2) as well as what type of crime (violent drug, property, or other) and how many crimes/convictions have been alleged (in model 3.3 below). This of course controls for some of the heterogeneity across individuals and particular crimes, so that the estimate of the political explanatory variable holds these important factors constant.

$$(3.2a) \text{ Prob}(\text{convict}_i = 1 | \mathbf{x}) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{state}_s + \beta_6 \text{time}_t + \varepsilon_{ist}$$

$$(3.2b) \text{ sentence}_i = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{state}_s + \beta_6 \text{time}_t + \varepsilon_{ist}$$

$$(3.3a) \text{ Prob}(\text{convict}_i = 1 | \mathbf{x}) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{numconvcharges}_i + \beta_6 \text{violent}_i + \beta_7 \text{property}_i + \beta_8 \text{drug}_i + \beta_9 \text{state}_s + \beta_{10} \text{time}_t + \varepsilon_{ist}$$

$$(3.3b) \text{ sentence}_i = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{numconvcharges}_i + \beta_6 \text{violent}_i + \beta_7 \text{property}_i + \beta_8 \text{drug}_i + \beta_9 \text{state}_s + \beta_{10} \text{time}_t + \varepsilon_{ist}$$

As summarized in the literature review in chapter one, a number of other ‘contextual factors’ or characteristics of the jury pool (or county) have been found to be important in criminal cases. Though a number of these controls are correlated with political affiliation, the goal of incorporating county socioeconomic controls (in model 3.4 below) is to further isolate the effect of political leanings while holding these constant. The racial composition of the jury pool, income, unemployment, workforce composition,⁷³ population density (or urban-ness), and educational attainment all may encapsulate the socioeconomic characteristics of the community and likely contribute to the values and perspectives of individual juries. In addition to these characteristics, I also control for the county’s crime rate. One study remarked that, “any plausible study of contextual factors that determine court decisions about punishment should control for community crime rates,” because spikes in crime rates tend to draw media attention and

⁷³ The composition of employment (percent of the workforce employed in agriculture, manufacturing, or government) gives a picture of the kind of economy and workforce in a particular county. Moreover, a county with a high manufacturing workforce composition may be associated with a more “blue collar” culture and values, which may not be captured by the other socioeconomic variables.

political attention to the issue and may subsequently exert pressure that affects trial outcomes (Helms and Jacobs 2002, p. 585).

$$(3.4a) \text{ Prob}(\text{convict}_i = 1 | \mathbf{x}) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{numconvcharges}_i + \beta_6 \text{violent}_i + \beta_7 \text{property}_i + \beta_8 \text{drug}_i + \beta_9 \text{pctblack}_i + \beta_{10} \text{pcthispanic}_i + \beta_{11} \text{incomepercapita}_i + \beta_{12} \text{pctunemp}_i + \beta_{13} \text{pctagriculture}_i + \beta_{14} \text{pctmanufacturing}_i + \beta_{15} \text{pctgovt}_i + \beta_{16} \text{popdensity}_i + \beta_{17} \text{pcthighschool}_i + \beta_{18} \text{pctbachelors}_i + \beta_{19} \text{crimerate}_i + \beta_{20} \text{state}_s + \beta_{21} \text{time}_t + \varepsilon_{ist}$$

$$(3.4b) \text{ sentence}_i = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{numconvcharges}_i + \beta_6 \text{violent}_i + \beta_7 \text{property}_i + \beta_8 \text{drug}_i + \beta_9 \text{pctblack}_i + \beta_{10} \text{pcthispanic}_i + \beta_{11} \text{incomepercapita}_i + \beta_{12} \text{pctunemp}_i + \beta_{13} \text{pctagriculture}_i + \beta_{14} \text{pctmanufacturing}_i + \beta_{15} \text{pctgovt}_i + \beta_{16} \text{popdensity}_i + \beta_{17} \text{pcthighschool}_i + \beta_{18} \text{pctbachelors}_i + \beta_{19} \text{crimerate}_i + \beta_{20} \text{state}_s + \beta_{21} \text{time}_t + \varepsilon_{ist}$$

My last model looks at how Democratic leaning jury pools rule in particular cases. That is, I look at the effect of political attitudes in violent crime cases, property crime cases, and drug crime cases by interacting the political explanatory variable with the crime type dummies (in model 3.5 below). While violent and property crimes do not have an obvious political angle to them, drug cases certainly do. The issue of drug legalization and leniency toward drug crimes has historically drawn a stark divide between liberal Democrats and conservative Republicans. Even internationally, more socially liberal countries like Canada and The Netherlands have decriminalized a number of drugs, most notably marijuana. Therefore, at least *ex ante*, one might expect more

liberal jury pools or constituencies to favor more lenient sentencing in drug-related crimes.

$$(3.5a) \text{ Prob}(\text{convict}_i = 1 | \mathbf{x}) = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{numconvcharges}_i + \beta_6 \text{violent}_i + \beta_7 \text{property}_i + \beta_8 \text{drug}_i + \beta_9 \text{pctblack}_i + \beta_{10} \text{pcthispanic}_i + \beta_{11} \text{incomepercapita}_i + \beta_{12} \text{pctunemp}_i + \beta_{13} \text{pctagriculture}_i + \beta_{14} \text{pctmanufacturing}_i + \beta_{15} \text{pctgovt}_i + \beta_{16} \text{popdensity}_i + \beta_{17} \text{pcthighschool}_i + \beta_{18} \text{pctbachelors}_i + \beta_{19} \text{crimerate}_i + \beta_{20} \text{violent*dem}_i + \beta_{21} \text{property*dem}_i + \beta_{22} \text{drug*dem}_i + \beta_{23} \text{state}_s + \beta_{24} \text{time}_t + \varepsilon_{ist}$$

$$(3.5b) \text{ sentence}_i = \beta_0 + \beta_1 \text{dem}_i + \beta_2 \text{male}_i + \beta_3 \text{black}_i + \beta_4 \text{age}_i + \beta_5 \text{numconvcharges}_i + \beta_6 \text{violent}_i + \beta_7 \text{property}_i + \beta_8 \text{drug}_i + \beta_9 \text{pctblack}_i + \beta_{10} \text{pcthispanic}_i + \beta_{11} \text{incomepercapita}_i + \beta_{12} \text{pctunemp}_i + \beta_{13} \text{pctagriculture}_i + \beta_{14} \text{pctmanufacturing}_i + \beta_{15} \text{pctgovt}_i + \beta_{16} \text{popdensity}_i + \beta_{17} \text{pcthighschool}_i + \beta_{18} \text{pctbachelors}_i + \beta_{19} \text{crimerate}_i + \beta_{20} \text{violent*dem}_i + \beta_{21} \text{property*dem}_i + \beta_{22} \text{drug*dem}_i + \beta_{23} \text{state}_s + \beta_{24} \text{time}_t + \varepsilon_{ist}$$

2. Model Results and Interpretation

a. Probability to Convict Results

Juries and judges who lean Democratic are less likely to convict in felony cases. Table 3.3 shows the logit coefficient estimates for all five models in jury trials, which only reveal qualitative interpretations (i.e. sign and statistical significance). Hence, Table 3.3 shows that as jury pools exhibit more Democratic leanings, the jury is less likely to convict. However, logit coefficient estimates do not provide very useful quantitative interpretations. The proceeding logit tables (tables 3.4 and 3.5) show the marginal

effects, or the change in probability to convict for an infinitesimal change in the independent variable (or discrete changes in the probability, from 0 to 1, for dummy variables).⁷⁴ These marginal changes hold all other variables constant and evaluate them at their respective means.

Tables 3.4 and 3.5 show the marginal effects of the logit models in jury and bench trials, respectively. In the simplest model, (3.1a) slightly more Democratic leaning juries and judges are only slightly (about 0.4% and 0.5% respectively) less likely to convict. Controlling for defendant traits (3.2a) and crime characteristics (3.3a) does not alter the political coefficient estimates all that much. However, after controlling for socioeconomic and demographic characteristics of the jury pool/community (in an effort to isolate the effect of political beliefs from the other jury pool characteristics), model 3.4a shows that slightly more Democratic leaning juries and judges are still slightly less likely to convict (by about 0.55% and 1.2% respectively). This effect is quite substantial when switching from an average county (52%) to a solidly pro-Democratic county (about 65%, or one standard deviation), all other things constant. For example, a solidly pro-Democratic jury pool would be about 7% less likely to convict in a jury trial, while its judge(s) would be about 15% less likely to convict in a bench trial, holding all else equal. Table 3.6 shows that in all trials,⁷⁵ this impact is about the same magnitude (about 0.5%) in a pooled jury and bench sample, and is generally consistent with the results in tables 3.4 and 3.5.

⁷⁴ In Stata, I use the “dlogit2” command, which is similar to the dprobit and other marginal effects commands. It is labeled as “dLogit” on tables 3.4 and 3.5 to signify this difference.

⁷⁵ All trials (table 3.6) contain a lot more observations than the sum of 3.4 and 3.5. This occurs because a substantial number of trials are coded as a general “trial (either bench or jury).”

Democratic leaning juries and judges are not less likely to convict in felony cases involving drugs, violent⁷⁶, or property crimes. Tables 3.4 and 3.5 show that Democratic leaning juries and judges do not show a particular bias either way depending on the nature of the crime⁷⁷, suggesting that there is no substantial departure in politically motivated leniency for conviction for any category of offenses. This result is generally consistent with all of the subsequent tables.

A number of other factors besides political leanings seem to affect the likelihood of conviction, however. In jury and bench trials (see table 3.6), drug offenses and additional conviction charges are more likely to result in a conviction, while violent crimes are surprisingly less likely than other crimes to result in a conviction.⁷⁸ Males are also more likely to be convicted than females. According to table 3.6, jury pools or counties with higher unemployment, crime rate, employment in manufacturing and government are all less likely to convict, while a higher black population results in a greater likelihood of conviction. And, perhaps most interestingly, black defendants are slightly *less* likely to be convicted in all trials.

⁷⁶ Democratic leaning juries are slightly more likely to convict in a violent crime trial, but it is only statistically significant at the 10% level.

⁷⁷ For example, the interaction term for drug crimes is simply $dem + drug*dem$, where $drug = 1$ for cases involving drugs.

⁷⁸ Perhaps this is a result of more serious penalties (like life sentences) for violent crimes, which jurors set a higher bar for a reasonable doubt.

b. Sentence Length Results

Democratic leaning jury pools impose longer sentences⁷⁹ in jury trials, but these political leanings do not impact sentence length in bench trials. According to tables 3.7 and 3.8, a slightly more (or one-percent more) Democratic leaning jury imposes a 2-4 month longer sentence in the NJRP data set and a 3-6 month longer sentence in the SCPS data set. Holding defendant traits, crime characteristics, and other socioeconomic characteristics constant (i.e. model 3.4b), there is a substantial impact on moving from a mildly pro-Democrat county to a much more (or, one standard deviation more) strongly pro-Democratic county. This much more strongly Democratic leaning county imposes sentences five to six years longer (in the NJRP and SCPS data respectively).⁸⁰ However, table 3.9 and 3.10 reveal that this effect does not carry over to bench trials, as the political explanatory variable was not significantly different from zero in either data set.⁸¹ These seemingly contradictory results will be discussed in the next section of this chapter.

As with the likelihood to convict, a number of other factors also explain variation in sentencing in jury trials. Tables 3.7 and 3.8 show that defendants convicted of violent crimes receive substantially higher sentences, about 9 to 20 years longer than other crimes (in the SCPS and NJRP data respectively). Both men and black defendants receive higher sentences in the NJRP data, but are not statistically significant from zero in the other data set. The same is true for the number of conviction charges, property and drug

⁷⁹ Again, in this context, I am purporting some de facto sentencing power by the jurors in choosing which charges to convict (because on average they have more than one charge from which to choose), even though judges in most states have the sentencing duty.

⁸⁰ All of these results are statistically significant at the 5% level.

⁸¹ The simple model (3.1b) in the NJRP data had statistical significance, which was the only exception.

crimes, income, manufacturing employment, population density, and the crime rate. A jury pool with a higher black population, government employment, and percent with a bachelor's degree will give lower sentences in the NJRP data, but these are also not statistically significant in the SCPS data. Lastly, it is also worth noting that Democratic leaning jury pools punish violent crime defendants more severely (in the NJRP data),⁸² which may help explain why Democrats impose such longer sentences as most of these cases are violent crimes.

While political attitudes do not seem to shape judges' sentencing decisions, tables 3.9 and 3.10 reveal that a number of other variables help explain variation in sentencing in bench trials. In both the SCPS and NJRP data sets, male and black defendants receive longer sentences. The number of conviction charges, violent, property, and drug crimes all receive higher sentences in both data sets. And counties with higher income, manufacturing employment, population density, and crime rates receive higher sentences in NJRP bench trials, but these results are not significant in the SCPC data.⁸³ In fact, no community characteristics are significant in the SCPS bench trials.

Though the evidence is a bit more mixed across data sets, it seems that pleas have a similar relationship between political attitudes and sentencing. That is, tables 3.11 and 3.12 show defendants in Democratic leaning counties agree to higher sentence lengths in their pleas in most models. In the NJRP data set (or table 3.12), pleas are a little higher (about 13 days) in a slightly more Democratic leaning county, after controlling for

⁸² These terms are jointly statistically significant at $p=.001$.

⁸³ Higher black populations, government employees, and college educated are associated with lower sentences in bench trials, but these are also not significant in the SCPS data.

individual traits, crime characteristics, and socioeconomic demographics. In a more strongly leaning Democratic county (i.e. one standard deviation or 14.79% higher), this means that pleas are about 6 months longer. This is considerable given that plea sentences are only about 39 months on average. This should reinforce the trial sentencing results, because if Democratic leaning juries and judges dole out longer sentences during trials, then both parties to the plea bargain should take this into account, *ex ante*. From a practical standpoint, the prosecution and defendant's attorney may have a feel for this tendency in their jurisdiction, thereby bargaining to a relatively higher sentence as a result of a higher threat value from the prosecution (in Democratic counties).⁸⁴

Lastly, when all sentences are pooled (i.e. both trials and pleas), the general tendency in both data sets remains: Democratic leaning counties impose longer sentences in most model specifications. Given the substantial differences in the average sentence length in pleas and trials, the magnitudes are quite different in tables 3.13 and 3.14, but the general relationship remains the same. Perhaps the most interesting part of these last tables is the sheer number of observations from which one can draw inferences. In the simplest models, there are 57,592 and 2.6 million observations in the SCPS and NJRP data sets respectively,⁸⁵ with an R^2 as high as 0.14 with only one explanatory variable. That is, a substantial amount of variation in sentencing can be explained in literally millions of cases around the United States.

⁸⁴ This effect may diminish as a result of the defense expecting a lower conviction rate. Given data on pleas, it seems as though the longer sentence length dominates the bargain.

⁸⁵ Due to incomplete data for a number of case variables, one can see a substantial drop in observations as case variables are incorporated into each model.

III. Discussion

To summarize the key findings, Democratic leaning jury pools (or counties) are less likely to convict in a criminal trial, but if they do convict, they dole out a longer sentence. The former result is consistent with the aforementioned hypothesis that Democratic leaning juries and judges may choose a higher standard of proof, which may be consistent with their ideological perspective on crime.⁸⁶ But, the latter result may signal “toughness” on crime, and at first glance seems out of character.⁸⁷ There are at least two possible explanations for result. First, given a greater propensity to acquit, Democratic jurors may tend only to convict the surer and more heinous cases. If this is true, this may lead to higher sentences in those counties.⁸⁸ Table 3.8 provides evidence in support of this hypothesis, as Democratic jury pools tend to extend considerably longer sentences for violent crimes in particular. Second, it might be the case that the prosecution’s determinations of charges are different across (Democratic and Republican) counties. For example, a Republican prosecutor from a Republican county may want to signal that she is “tough on crime” on borderline cases, pursuing a murder charge rather than, say, a manslaughter charge, whereas a Democratic prosecutor may pursue the latter charge for the same crime. However, when a (presumably more lenient) Democratic prosecutor pursues a murder charge, it could mean that the underlying crime is actually more serious as compared to a corresponding charge in the Republican county. Hence,

⁸⁶ Or, symmetrically, Republican leaning juries may choose a lower standard of proof and a higher likelihood of conviction, consistent with their ideological perspective.

⁸⁷ In fact, this sentencing result is contrary to a number of prior papers in this literature.

⁸⁸ An extreme example would be someone who only convicts murderers, rapists, and the like. And, they only convict if the case is crystal clear. In this extreme, the average sentence should be much higher.

sentences should be longer if the defendant's underlying behavior is more serious for a given crime. Moreover, this line of reasoning suggests that the lower conviction rate in Democratic counties is even more telling, whereas Democratic leaning counties may be convicting less despite the more serious underlying behavior.

These results are also consistent with Sunstein's et al (2006) book *Are Judges Political?*, as outcomes from the bench have a political bend to them. Table 3.5 supports the notion that judges are in fact political (or act *as if* they are by responding to constituency leanings) as Democratic leaning counties are less likely to convict in bench trials. Like jurors, judges are relatively insulated; and, because many state judges are elected they will likely be rewarded for ruling politically in a way congruent with their own constituency. But, there is limited evidence showing that they impose longer sentences just as jurors do. Only one model in tables 3.9 and 3.10 shows that judges impose longer sentences. And even that model shows only a modest effect (only 0.4 months). One alternative explanation might be that jurors tend to exaggerate individual leanings as they make group decisions. Experimental evidence from Sunstein's et al. (2002) book *Punitive Damages: How Juries Decide* suggests that, "27% of juries awarded as much or more than any individual juror had awarded predeliberation, and 83% of the awards were above the median individual juror's award" (Sunstein et al 2002, p 22). Hence, once jurors come to a conviction verdict (or in the tort case, decided to award punitive damages), there is a strong tendency to signal "toughness" on a scale that

they may not have expressed individually predeliberation and choose to convict on more charges than they may have individually.⁸⁹

The central hypothesis of this paper makes the economic case that it is reasonable to expect a causal relationship between political beliefs and trial outcomes, given the incentives of the *rational political* juror. The robust correlation between a jury pool's political leanings and trial outcomes presented here provides real world evidence that is consistent with this hypothesis, but does not confirm a causal relationship due to limitations of these panel data sets. More detailed real world data (such as the actual political or ideological composition of juries) could substantially tighten this empirical link. Further research including well-designed laboratory experiments, perhaps involving mock trials, may help establish this causality, which has the potential to complement these results because an experiment could hold a number of factors constant that are currently entangled in the empirical data.⁹⁰

IV. Conclusion

Political attitudes of a jury pool (or county) affect real world criminal trial outcomes. The key results of this chapter are that Democratic leaning counties are less likely to deliver a convicting verdict, but given a felony conviction, they deliver a significantly longer sentence. In particular, juries in a solidly pro-Democratic county (about 65%, or one standard deviation more than average) are about 7% less likely to

⁸⁹ Moreover, judges in jury trials may feel more confident sentencing given that another group of individuals has decided guilt. However, further research on this topic is needed to make this claim with any confidence.

⁹⁰ For example, judges in Democratic-leaning counties are more likely to be Democratic themselves. Therefore, even in jury trials, they may have a subtle affect on the outcome indirectly by influencing jury proceedings as they potentially make evidentiary rulings and other subtle measures to sway outcomes.

convict than juries in an average county. And, these same solidly pro-Democratic counties impose longer sentences by as much as 5 or 6 years. While a number of other factors help explain criminal trial outcomes over two relatively large nationally representative data sets, political leanings (as measured by a county's Democratic presidential vote) consistently impact trial outcomes over a number of model specifications. Like Chapter Two, the findings in this chapter are broadly consistent with the hypothesis that jurors (and judges) tend to choose to indulge in personal preferences like political beliefs, behaving as if they were *rationaly political* in this particular setting.

TABLES

Table 2.1 Means and Standard Deviations State Court (CJS) Data set			
totalverdict	531,579 (3,686,567)	pctagriculture	1.00 (1.32)
dem	52.08 (12.35)	pctmanufacturing	14.52 (5.11)
pctpoverty	12.76 (5.15)	pctgovt	6.824 (4.576)
pctblack	16.56 (12.04)	popdensity	5675 (12,239)
pcthispanic	15.10 (14.16)	pctold	12.35 (3.52)
incomepercapita	19,688 (6,054)	pctbachelors	27.40 (8.55)
pctunemp	6.472 (2.051)		
standard deviations in ()			

Table 2.2 Means and Standard Deviations Jury Verdict Research (JVR) Data set			
totalverdict	951,539 (8,819,938)	pctagriculture	.7665 (.9919)
dem	52.75 (11.85)	pctmanufacturing	14.38 (5.07)
pctpoverty	13.64 (4.85344)	pctgovt	7.73 (4.63)
pctblack	19.14 (11.89)	popdensity	6,301 (13,267)
pcthispanic	17.03 (15.00)	pctold	12.24 (3.49)
incomepercapita	20,657 (6,630)	pctbachelors	27.52 (8.37)
pctunemp	6.81 (1.96)		
standard deviations in ()			

**Table 2.3 – Regressions of Tort Awards
on the Political Variable with Controls
- State Court (CJS) Data -**

Dependent Variable: log(Total Awards)				
	(2.1)	(2.2)	(2.3)	(2.4)
	Basic Model	With Poverty and Race Controls	With Poverty, Race, and Other Socioeconomic Controls	All Controls with State and Year Fixed Effects
dem	0.0321***	0.0313***	0.0311***	0.0210***
	(17.64)	(13.59)	(8.292)	(3.360)
pctpoverty		0.0298***	-0.0879***	0.0302
		(3.776)	(-6.208)	(1.064)
pctblack		-0.00971***	-0.00543	-0.00615
		(-3.128)	(-1.451)	(-0.838)
pcthispc		0.0123***	0.0153***	-0.0107*
		(5.341)	(5.885)	(-1.941)
incomepercapita			0.0000140	0.0000381*
			(1.404)	(1.659)
pctunemp			0.164***	0.00456
			(5.428)	(0.0973)
pctagriculture			0.0533***	-0.0657**
			(2.677)	(-2.451)
pctmanufacturing			-0.0173**	0.00920
			(-2.178)	(0.779)
pctgovt			-0.0386***	0.0162
			(-4.092)	(0.719)
popdensity			0.0000301***	0.0000183
			(7.427)	(1.532)
pctold			-0.0428***	-0.0462**
			(-3.821)	(-2.486)
pctbachelors			-0.0365***	-0.0338**
			(-4.078)	(-2.101)
Constant	9.144***	8.781***	10.66***	8.922***
	(93.59)	(86.48)	(25.71)	(12.22)
Observations	8297	8297	8297	8236
R-squared	0.036	0.053	0.077	0.105
Robust t statistics in parentheses				
*** p<0.01, ** p<0.05, * p<0.1				

**Table 2. 4 – Regressions of Tort Awards
on the Political Variable with Controls
- Jury Verdict Research (JVR) Data -**

Dependent Variable: log(Total Awards)					
	(2.1)	(2.2)	(2.3)	(2.4)	(2.5)
	Basic Model	With Poverty and Race Controls	With Poverty, Race, and Other Socioeconomic Controls	All Controls with State and Year Fixed Effects	All Controls With Fixed Effects and Injuries
dem	0.0287***	0.0249***	0.0204***	0.0143***	0.0136***
	(24.14)	(16.60)	(8.586)	(3.512)	(3.586)
pctpoverty		0.0903***	-0.0460***	0.0596***	0.0570***
		(14.88)	(-4.407)	(3.144)	(3.285)
pctblack		-0.032***	-0.025***	-0.016***	-0.0152***
		(-15.14)	(-10.18)	(-3.465)	(-3.638)
pcthispanic		-0.00047	0.00723***	-0.0114***	-0.0126***
		(-0.295)	(4.219)	(-3.376)	(-4.059)
incomepercapita			.000033***	.000065***	.000072***
			(4.708)	(4.969)	(5.883)
pctunemp			0.270***	0.0262	0.00972
			(13.91)	(0.923)	(0.370)
pctagriculture			0.101***	-0.0228	-0.0249
			(5.403)	(-1.135)	(-1.258)
pctmanufacturing			-0.0310***	-0.0175**	-0.0113*
			(-6.910)	(-2.537)	(-1.802)
pctgovt			-0.0596***	-0.0708***	-0.0577***
			(-9.855)	(-5.024)	(-4.519)
popdensity			.000019***	-.000015**	-.000017**
			(7.812)	(-2.130)	(-2.565)
pctold			-0.0157**	-0.0555***	-0.0487***
			(-2.206)	(-4.922)	(-4.637)
pctbachelors			-0.0260***	-0.0607***	-0.0633***
			(-4.046)	(-6.233)	(-6.924)
deathinjury					1.895***
					(30.89)
backbody					-1.354***
					(-27.67)
limbs					-0.258***
					(-4.952)
head					-0.658***
					(-11.32)
internal					0.493***
					(7.461)
psych					0.102
					(1.319)
Constant	9.590***	9.184***	10.09***	9.578***	10.24***
	(148.4)	(136.1)	(37.44)	(21.83)	(25.08)
Observations	26840	26840	26840	26840	26840
R-squared	0.020	0.045	0.073	0.107	0.238
Robust t statistics in parentheses					
*** p<0.01, ** p<0.05, * p<0.1					

Table 3.1 Means and Standard Deviations State Court Processing Statistics Data Set			
sentence	169.5	pcthisp	19.67
	(311.3)		(15.95)
convicted	.7773	incomepercapita	19,840
	(.4161)		(5130)
dem	54.02	pctunemp	6.81
	(12.79)		(2.133)
male	.9309	pctagriculture	.6564
	(.2537)		(.6723)
black	.5105	pctmanufacturing	12.52
	(.5001)		(4.996)
ageatarrest	30.60	pctgovt	11.16
	(9.995)		(5.772)
numarrestcharges	2.610	popdensity	4,469
	(1.943)		(8,449)
violent	.5170	pcthighschool	77.08
	(.4998)		(6.896)
property	.1886	pctbachelors	25.94
	(.3913)		(7.428)
drug	.2237	crimerate	6,798
	(.4168)		(2,909)
pctblack	19.55		
	(16.67)		
standard deviations in ()			

Table 3.2
Means and Standard Deviations
National Judicial Reporting Program Data Set

sentence	263.3	pcthispanic	13.29
	(472.01)		(12.75)
dem	52.15	incomepercapita	20,753
	(14.62)		(7,076)
male	.9306	pctunemp	6.528
	(.2541)		(2.386)
black	.5935	pctagriculture	1.016
	(.4912)		(1.722)
ageatarrest	30.76	pctmanufacturing	13.40
	(10.18)		(6.952)
numarrestcharges	1.783	pctgovt	11.24
	(1.866)		(5.969)
violent	.5769	popdensity	6,187
	(.4940)		(13,903)
property	.1297	pcthighschool	78.63
	(.3359)		(7.298)
drug	.1765	pctbachelors	25.73
	(.3813)		(9.249)
pctblack	17.67	crimerate	6,006
	(15.44)		(2,642)
standard deviations in ()			

Table 3.3 – Logit of Felony Conviction on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
Jury Trials Only						
		Dependent Variable: Conviction (= 1, Acquittal = 0)				
		(3.1a)	(3.2a)	(3.3a)	(3.4a)	(3.5a)
	dem	-0.0223**	-0.0225**	-0.0242**	-0.0359**	-0.0726***
		(-2.571)	(-2.282)	(-2.390)	(-2.176)	(-2.616)
Defendant Traits	male		0.232 (1.025)	0.227 (0.986)	0.239 (0.977)	0.231 (0.929)
	black		-0.0836 (-0.598)	-0.0925 (-0.657)	-0.115 (-0.750)	-0.106 (-0.692)
	ageat arrest		-0.00526 (-0.810)	-0.00487 (-0.738)	-0.00496 (-0.717)	-0.00542 (-0.783)
	numconvcharges			0.188*** (4.351)	0.201*** (4.431)	0.200*** (4.308)
	violent			-0.161 (-0.639)	-0.0323 (-0.126)	-2.111* (-1.699)
Crime Characteristics	property			-0.116 (-0.419)	0.0305 (0.107)	-1.599 (-1.115)
	drug			0.234 (0.862)	0.479* (1.696)	-1.700 (-1.244)
	pctblack				-0.00392 (-0.135)	-0.00428 (-0.146)
	pcthispanic				-0.0488** (-2.418)	-0.0495** (-2.442)
	incomepercapita				-0.0000754 (-1.061)	-0.0000785 (-1.105)
Demographic Characteristics of the Jury/Community	pctunemp				-0.0427 (-0.312)	-0.0373 (-0.274)
	pctagriculture				0.180 (0.911)	0.192 (0.959)
	pctmanufacturing				-0.0312 (-0.841)	-0.0310 (-0.836)
	pctgovt				0.0459 (0.984)	0.0472 (1.006)
	popdensity				-0.0000561 (-1.630)	-0.0000545 (-1.576)
	pcthighschool				-0.180*** (-3.112)	-0.182*** (-3.111)
	pctbachelors				0.138*** (3.090)	0.142*** (3.172)
	crimrate				-0.0000151 (-0.214)	-0.0000170 (-0.241)
	violentXdem					0.0396* (1.696)
	propertyXdem					0.0308 (1.130)
	drugXdem					0.0414 (1.619)
	Constant	5.030*** (4.583)	1.393 (1.459)	1.320 (1.374)	14.64*** (2.868)	16.62*** (3.160)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	1938	1618	1618	1523	1523
	Number of Years	7	7	7	7	7
Pseudo R-squared	0.0484	0.0595	0.0763	0.0884	0.0904	
(Robust z-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1						

Table 3.4 – dLogit of Felony Conviction on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
Jury Trials Only						
Dependent Variable: Conviction (= 1, Acquittal = 0)						
		(3.1a)	(3.2a)	(3.3a)	(3.4a)	(3.5a)
	dem	-0.00366***	-0.00367**	-0.00384**	-0.00548**	-0.0111***
		(-2.592)	(-2.302)	(-2.409)	(-2.180)	(-2.617)
Defendant Traits	male		0.0378	0.0361	0.0365	0.0352
			(1.025)	(0.986)	(0.977)	(0.928)
	black		-0.0137	-0.0147	-0.0175	-0.0162
			(-0.598)	(-0.657)	(-0.750)	(-0.692)
	ageatarrest		-0.000859	-0.000773	-0.000758	-0.000827
			(-0.809)	(-0.738)	(-0.716)	(-0.783)
Crime Characteristics	numconvcharges			0.0299***	0.0307***	0.0305***
				(4.454)	(4.568)	(4.437)
	violent			-0.0255	-0.00494	-0.322*
				(-0.638)	(-0.126)	(-1.698)
	property			-0.0185	0.00466	-0.244
			(-0.419)	(0.107)	(-1.114)	
	drug			0.0372	0.0732*	-0.259
				(0.861)	(1.697)	(-1.242)
Demographic Characteristics of the Jury/Community	pctblack				-0.000600	-0.000653
					(-0.135)	(-0.146)
	pcthispanic				-0.00746**	-0.00755**
					(-2.432)	(-2.457)
	incomepercapita				-0.0000115	-0.0000120
					(-1.064)	(-1.108)
	pctunemp				-0.00652	-0.00569
					(-0.312)	(-0.274)
	pctagriculture				0.0275	0.0293
					(0.912)	(0.960)
	pctmanufacturing				-0.00476	-0.00473
					(-0.841)	(-0.836)
	pctgovt				0.00701	0.00720
					(0.983)	(1.005)
	popdensity				-0.00000857	-0.00000832
					(-1.638)	(-1.584)
	pcthighschool				-0.0276***	-0.0277***
				(-3.134)	(-3.134)	
pctbachelors				0.0210***	0.0216***	
				(3.113)	(3.198)	
crimerate				-0.00000231	-0.00000260	
				(-0.214)	(-0.241)	
Interaction Terms	violentXdem					0.00603*
						(1.695)
	propertyXdem					0.00470
						(1.129)
	drugXdem					0.00632
						(1.617)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	1938	1618	1618	1523	1523
	Number of Years	7	7	7	7	7
	Pseudo R-squared	0.0484	0.0595	0.0763	0.0884	0.0904

(Robust z-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.5 – dLogit of Felony Conviction on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
Bench Trials Only						
Dependent Variable: Conviction (= 1, Acquittal = 0)						
		(3.1a)	(3.2a)	(3.3a)	(3.4a)	(3.5a)
	dem	-0.00546***	-0.00713***	-0.00693***	-0.0124**	-0.0138**
		(-3.866)	(-4.364)	(-4.426)	(-2.233)	(-2.371)
Defendant Traits	male		0.0137 (0.636)	0.0120 (0.573)	0.0136 (0.640)	0.0142 (0.663)
	black		-0.0144 (-0.779)	-0.0188 (-1.043)	-0.0179 (-1.007)	-0.0172 (-0.968)
	ageatarrest		-0.00192** (-2.506)	-0.00154** (-2.056)	-0.00151** (-1.984)	-0.00152** (-1.993)
	numconvcharges			0.0168*** (3.080)	0.0161*** (2.987)	0.0144** (2.559)
	violent			-0.00542 (-0.202)	-0.000533 (-0.0199)	-0.124 (-0.909)
Crime Characteristics	property			0.0559** (2.072)	0.0566** (2.100)	-0.0244 (-0.173)
	drug			0.0752*** (2.799)	0.0753*** (2.807)	0.0491 (0.354)
	pctblack				0.000837 (0.129)	0.000919 (0.142)
	pcthispanic				-0.0000374 (-0.00958)	-0.000182 (-0.0461)
	incomepercapita				0.00000571 (0.392)	0.00000466 (0.316)
Demographic Characteristics of the Jury/Community	pctunemp				-0.00853 (-0.412)	-0.00842 (-0.406)
	pctagriculture				-0.0347 (-0.687)	-0.0325 (-0.635)
	pctmanufacturing				0.00876 (0.640)	0.00877 (0.632)
	pctgovt				0.00764 (0.489)	0.00739 (0.473)
	popdensity				0.00000465 (0.543)	0.00000436 (0.504)
	pcthighschool				-0.00465 (-0.309)	-0.00497 (-0.329)
	pctbachelors				0.00412 (0.442)	0.00484 (0.515)
	crimerate				-0.00000937 (-0.847)	-0.00000912 (-0.817)
	violentXdem					0.00216 (0.930)
	propertyXdem					0.00138 (0.576)
	drugXdem					0.000465 (0.202)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	2302	2003	2003	1911	1911
	Number of Years	7	7	7	7	7
	Pseudo R-squared	0.0755	0.0860	0.1022	0.1179	0.1188
(Robust z-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1						

Table 3.6 – dLogit of Felony Conviction on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
All Trials						
		Dependent Variable: Conviction (= 1, Acquittal = 0)				
		(3.1a)	(3.2a)	(3.3a)	(3.4a)	(3.5a)
dem		-0.00495***	-0.00523***	-0.00537***	-0.00483***	-0.00495***
		(-27.59)	(-25.31)	(-25.74)	(-10.90)	(-7.873)
Defendant Traits	male		0.0195***	0.0248***	0.0241***	0.0242***
			(4.494)	(5.688)	(5.344)	(5.373)
	black		-0.0111***	-0.00943***	-0.00747**	-0.00744**
			(-3.123)	(-2.640)	(-1.966)	(-1.960)
	ageatarrest		0.0000427	-0.000190	-0.000493***	-0.000494***
		(0.259)	(-1.162)	(-2.907)	(-2.907)	
Crime Characteristics	numconvcharges			0.000185*	0.000190*	0.000189*
				(1.694)	(1.853)	(1.849)
	violent			-0.118***	-0.111***	-0.127***
				(-18.62)	(-16.90)	(-4.357)
	property			-0.00275	-0.00457	-0.0171
			(-0.437)	(-0.704)	(-0.581)	
	drug			0.0232***	0.0149**	0.0187
				(3.712)	(2.305)	(0.641)
Demographic Characteristics of the Jury/Community	pctblack				0.00417***	0.00416***
					(6.024)	(6.008)
	pcthispanic				0.000201	0.000197
					(0.386)	(0.379)
	incomepercapita				0.000000649	0.000000616
					(0.415)	(0.393)
	pctunemp				-0.0301***	-0.0301***
					(-8.569)	(-8.569)
	pctagriculture				0.0117**	0.0119**
					(1.973)	(2.003)
	pctmanufacturing				-0.00464***	-0.00464***
					(-5.922)	(-5.915)
	pctgovt				-0.00678***	-0.00679***
					(-5.586)	(-5.593)
	popdensity				0.000000829	0.000000824
					(1.482)	(1.473)
	pcthighschool				-0.000287	-0.000276
					(-0.179)	(-0.172)
pctbachelors				-0.000809	-0.000807	
				(-0.791)	(-0.790)	
crimerate				-0.0000177***	-0.0000177***	
				(-10.39)	(-10.37)	
Interaction Terms	violentXdem					0.000308
						(0.582)
	propertyXdem					0.000236
						(0.439)
	drugXdem					-0.0000668
						(-0.127)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	86372	74263	74263	67436	67436
	Number of Years	7	7	7	7	7
	Pseudo R-squared	0.0741	0.0786	0.0926	0.1068	0.1068

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.7 – Regressions of Sentence Length on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
Jury Trials Only						
Dependent Variable: Sentence Length (in months)						
	(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)	
	dem	3.255**	3.964***	3.876***	5.614**	6.043*
		(2.556)	(2.602)	(2.631)	(2.254)	(1.756)
Defendant Traits	male		42.12	15.09	10.11	9.754
			(1.266)	(0.480)	(0.310)	(0.298)
	black		33.89	43.49**	29.52	29.54
			(1.495)	(1.971)	(1.277)	(1.270)
	ageatarrest		-1.357	-0.463	-0.611	-0.602
			(-1.408)	(-0.486)	(-0.624)	(-0.612)
Crime Characteristics	numconvcharges			10.09	10.47	10.57
				(1.549)	(1.587)	(1.570)
	violent			113.7***	106.0***	133.8
				(3.021)	(2.807)	(0.954)
	property			-51.53	-56.05	-40.09
				(-1.440)	(-1.544)	(-0.289)
	drug			-38.20	-35.21	-20.09
				(-1.075)	(-0.981)	(-0.150)
Demographic Characteristics of the Jury/Community	pctblack				1.946	1.948
					(0.447)	(0.447)
	pcthispanic				-6.230**	-6.209**
					(-2.095)	(-2.092)
	incomepercapita				-0.00448	-0.00441
					(-0.460)	(-0.452)
	pctunemp				-8.820	-8.578
					(-0.617)	(-0.602)
	pctagriculture				26.39	26.16
					(0.760)	(0.751)
	pctmanufacturing				-2.541	-2.539
					(-0.467)	(-0.466)
	pctgovt				1.136	1.125
					(0.156)	(0.153)
	popdensity				-0.00701*	-0.00697*
					(-1.928)	(-1.909)
	pcthighschool				-13.33	-13.26
				(-1.400)	(-1.395)	
pctbachelors				-3.433	-3.471	
				(-0.452)	(-0.456)	
crimerate				-0.0143	-0.0143	
				(-1.161)	(-1.157)	
Interaction Terms	violentXdem					-0.549
						(-0.198)
	propertyXdem					-0.320
						(-0.114)
	drugXdem					-0.307
					(-0.116)	
	Constant	-264.8**	-215.1**	-191.4*	1112	1082
		(-2.167)	(-2.092)	(-1.750)	(1.338)	(1.309)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	1312	1105	1105	1053	1053
	Number of Years	7	7	7	7	7
	R-squared	0.110	0.129	0.189	0.201	0.201

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.8 – Regressions of Sentence Length on the Political Variable with Controls						
National Judicial Reporting Program Data: 1986 – 2004						
Jury Trials Only						
		Dependent Variable: Sentence Length (in months)				
		(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)
	dem	3.920***	2.407***	1.956***	4.037***	2.942***
		(23.18)	(7.983)	(6.840)	(7.346)	(4.351)
Defendant Traits	male		107.1***	71.24***	66.93***	68.71***
			(9.896)	(6.690)	(6.050)	(6.210)
	black		37.89***	42.97***	45.12***	45.05***
			(5.650)	(6.523)	(6.262)	(6.251)
	ageatarrest		-1.555***	-0.423	-0.570*	-0.552*
			(-5.299)	(-1.493)	(-1.886)	(-1.829)
Crime Characteristics	numconvcharges			34.51***	34.16***	33.72***
				(7.671)	(7.485)	(7.404)
	violent			238.5***	241.1***	128.8***
				(29.18)	(27.89)	(4.074)
	property			27.38***	26.80***	18.45
				(3.257)	(3.031)	(0.523)
	drug			27.25***	29.62***	76.91**
				(3.667)	(3.664)	(2.504)
Demographic Characteristics of the Jury/Community	pctblack				-2.442***	-2.504***
					(-4.269)	(-4.373)
	pcthispanic				0.410	0.422
					(0.632)	(0.650)
	incomepercapita				0.00893***	0.00900***
					(4.429)	(4.458)
	pctunemp				2.831	3.303
					(0.863)	(1.003)
	pctagriculture				-5.422	-5.607
					(-1.535)	(-1.588)
	pctmanufacturing				3.038***	2.995***
					(2.808)	(2.761)
	pctgovt				-4.125***	-4.293***
					(-2.677)	(-2.781)
	popdensity				0.00217**	0.00193**
					(2.456)	(2.157)
	pcthighschool				0.657	0.840
				(0.447)	(0.571)	
pctbachelors				-4.440***	-4.376***	
				(-3.488)	(-3.438)	
crimrate				0.0129***	0.0128***	
				(4.273)	(4.250)	
Interaction Terms	violentXdem					2.229***
						(4.088)
	propertyXdem					0.135
						(0.210)
	drugXdem					-0.943*
						(-1.786)
	Constant	-21.87	-20.62	-217.9***	-418.8***	-369.8**
		(-1.285)	(-0.694)	(-7.178)	(-2.922)	(-2.576)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	51701	22215	21481	19979	19979
	Number of Years	10	10	10	10	10
	R-squared	0.061	0.061	0.136	0.144	0.145

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.9 – Regressions of Sentence Length on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
Bench Trials Only						
Dependent Variable: Sentence Length (in months)						
	(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)	
	dem	-0.135	-0.260	-0.168	1.179	0.739
		(-0.489)	(-0.775)	(-0.466)	(1.376)	(0.713)
Defendant Traits	male		11.51***	12.03***	12.34***	13.27***
			(3.789)	(3.844)	(3.980)	(4.146)
	black		5.588	5.617*	6.927**	7.175**
			(1.598)	(1.650)	(2.004)	(2.034)
	ageatarrest		0.202	0.223	0.187	0.166
			(1.271)	(1.393)	(1.111)	(0.987)
Crime Characteristics	numconvcharges			2.103***	2.152***	1.612**
				(2.946)	(2.902)	(2.263)
	violent			30.88***	32.19***	-38.65
				(5.630)	(5.508)	(-1.212)
	property			12.31***	14.13***	-7.002
				(2.714)	(2.810)	(-0.261)
	drug			10.79**	10.42**	17.31
				(2.048)	(2.283)	(0.644)
Demographic Characteristics of the Jury/Community	pctblack				-1.576	-1.713
					(-0.847)	(-0.919)
	pcthispanic				-0.941	-1.093
					(-0.793)	(-0.922)
	incomepercapita				0.00249	0.00200
					(0.490)	(0.398)
	pctunemp				7.272	7.747
					(0.975)	(1.042)
	pctagriculture				73.49	73.86
					(1.093)	(1.106)
	pctmanufacturing				2.237	2.074
					(0.929)	(0.860)
	pctgovt				-2.124	-2.833
					(-0.976)	(-1.299)
	popdensity				0.00139	0.00111
					(0.524)	(0.416)
	pcthighschool				-2.607	-2.842
				(-0.807)	(-0.881)	
pctbachelors				-0.571	-0.128	
				(-0.171)	(-0.0383)	
crimerate				-0.00522	-0.00428	
				(-0.502)	(-0.415)	
Interaction Terms	violentXdem					1.316**
						(2.142)
	propertyXdem					0.393
						(0.870)
	drugXdem					-0.107
						(-0.230)
	Constant	72.27*	5.049	-20.48	103.5	160.4
		(1.899)	(0.278)	(-0.970)	(0.326)	(0.508)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	1788	1571	1571	1498	1498
	Number of Years	7	7	7	7	7
	R-squared	0.081	0.095	0.117	0.147	0.154

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.10 – Regressions of Sentence Length on the Political Variable with Controls						
National Judicial Reporting Program Data: 1986 – 2004						
Bench Trials Only						
		Dependent Variable: Sentence Length (in months)				
		(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)
	dem	0.415***	0.266	-0.0703	0.158	0.0963
		(2.714)	(0.883)	(-0.231)	(0.277)	(0.154)
Defendant Traits	male		45.95***	38.18***	38.30***	38.88***
			(10.02)	(7.994)	(7.951)	(8.039)
	black		29.25***	34.57***	35.21***	34.83***
			(6.680)	(7.521)	(7.339)	(7.268)
	ageatarrest		-0.587***	-0.243	-0.224	-0.217
			(-2.941)	(-1.200)	(-1.081)	(-1.045)
Crime Characteristics	numconvcharges			33.85***	33.58***	33.12***
				(7.478)	(7.393)	(7.257)
	violent			145.0***	145.8***	78.47***
				(25.47)	(25.23)	(2.858)
	property			23.75***	24.70***	17.16
				(5.132)	(5.240)	(0.779)
	drug			12.67***	12.59***	59.08***
				(3.272)	(3.212)	(3.115)
Demographic Characteristics of the Jury/Community	pctblack				-0.0116	-0.128
					(-0.0244)	(-0.268)
	pcthispanic				-1.582**	-1.599**
					(-2.408)	(-2.433)
	incomepercapita				-0.00274	-0.00234
					(-0.898)	(-0.769)
	pctunemp				-5.255**	-4.954**
					(-2.260)	(-2.130)
	pctagriculture				3.180	3.644
					(1.246)	(1.423)
	pctmanufacturing				0.378	0.427
					(0.486)	(0.549)
	pctgovt				0.290	0.0883
					(0.291)	(0.0884)
	popdensity				0.00336***	0.00346***
					(2.854)	(2.940)
	pcthighschool				0.610	0.865
					(0.651)	(0.922)
pctbachelors				0.426	0.170	
				(0.297)	(0.118)	
crimrate				0.00310	0.00360	
				(0.923)	(1.072)	
Interaction Terms	violentXdem					1.300***
						(2.597)
	propertyXdem					0.147
						(0.370)
	drugXdem					-0.883***
						(-2.597)
	Constant	41.06*	-7.482	-116.5***	-115.7	-135.4
		(1.664)	(-0.217)	(-3.402)	(-0.861)	(-0.986)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	41627	19709	18586	18338	18338
	Number of Years	10	10	10	10	10
	R-squared	0.187	0.212	0.263	0.264	0.265

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.11 – Regressions of Sentence Length on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
Pleas Only						
		Dependent Variable: Sentence Length (in months)				
		(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)
	dem	0.0839**	0.0560	0.0517	-0.0286	-0.0993
		(2.415)	(1.418)	(1.311)	(-0.433)	(-1.274)
Defendant Traits	male		11.47***	9.757***	9.658***	9.652***
			(18.73)	(16.32)	(17.13)	(17.23)
	black		3.202***	3.090***	3.191***	3.203***
			(4.085)	(3.959)	(4.171)	(4.173)
	ageatarrest		0.0829**	0.152***	0.102***	0.101***
		(2.364)	(4.370)	(3.027)	(3.000)	
Crime Characteristics	numconvcharges			0.00894**	0.00845**	0.00850**
				(2.324)	(2.217)	(2.232)
	violent			29.17***	29.25***	25.96***
				(20.53)	(21.65)	(3.539)
	property			4.992***	4.887***	0.201
			(6.387)	(7.804)	(0.0587)	
	drug			4.139***	3.813***	0.170
				(5.424)	(6.395)	(0.0519)
Demographic Characteristics of the Jury/Community	pctblack				-0.244**	-0.242**
					(-2.135)	(-2.105)
	pcthispanic				-0.378***	-0.378***
					(-4.268)	(-4.277)
	incomepercapita				-0.0000496	-0.0000522
					(-0.174)	(-0.183)
	pctunemp				2.691***	2.692***
					(3.207)	(3.199)
	pctagriculture				0.400	0.410
					(0.477)	(0.489)
	pctmanufacturing				-0.142	-0.143
					(-1.630)	(-1.644)
	pctgovt				-0.413*	-0.417*
					(-1.750)	(-1.764)
	popdensity				-0.0000803	-0.0000769
					(-0.425)	(-0.400)
	pcthighschool				-0.436	-0.436
					(-1.571)	(-1.575)
	pctbachelors				0.160	0.162
					(0.943)	(0.954)
crimrate				-0.000538	-0.000543	
				(-1.482)	(-1.492)	
Interaction Terms	violentXdem					0.0640
						(0.463)
	propertyXdem					0.0915
						(1.381)
	drugXdem					0.0710
						(1.139)
	Constant	11.75***	-0.467	-10.38**	29.99	33.69
		(3.225)	(-0.113)	(-2.397)	(1.283)	(1.460)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	44,796	38,056	38,056	36,442	36,442
	Number of Years	7	7	7	7	7
	R-squared	0.025	0.027	0.051	0.056	0.056

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.12 – Regressions of Sentence Length on the Political Variable with Controls						
National Judicial Reporting Program Data: 1986 – 2004						
Pleas Only						
		Dependent Variable: Sentence Length (in months)				
		(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)
dem		0.289***	0.263***	0.178***	0.426***	0.397***
		(23.48)	(11.34)	(8.022)	(8.576)	(6.367)
Defendant Traits	male		20.17***	15.84***	15.86***	15.92***
			(44.53)	(34.76)	(33.83)	(34.01)
	black		6.984***	6.949***	7.668***	7.688***
			(15.46)	(15.49)	(16.46)	(16.49)
	ageatarrest		-0.0187	0.143***	0.0990***	0.106***
			(-0.929)	(7.260)	(4.796)	(5.134)
Crime Characteristics	numconvcharges			15.96***	16.24***	16.20***
				(21.56)	(21.64)	(21.61)
	violent			65.56***	67.39***	48.39***
				(82.91)	(81.49)	(11.71)
	property			8.516***	8.015***	15.58***
				(16.79)	(15.29)	(5.986)
	drug			9.118***	7.616***	6.849***
				(21.23)	(17.08)	(3.064)
Demographic Characteristics of the Jury/Community	pctblack				-0.129**	-0.130**
					(-2.316)	(-2.336)
	pcthispanic				-0.742***	-0.740***
					(-13.75)	(-13.71)
	incomepercapita				0.000671***	0.000679***
					(5.352)	(5.408)
	pctunemp				0.596*	0.642*
					(1.755)	(1.883)
	pctagriculture				0.811***	0.805***
					(2.770)	(2.740)
	pctmanufacturing				1.343***	1.341***
					(16.49)	(16.47)
	pctgovt				0.232**	0.231**
					(2.476)	(2.470)
	popdensity				0.000406***	0.000329***
					(5.832)	(4.569)
	pcthighschool				0.678***	0.698***
					(5.756)	(5.945)
pctbachelors				-0.257***	-0.257***	
				(-3.235)	(-3.232)	
crimrate				0.00291***	0.00291***	
				(10.47)	(10.48)	
Interaction Terms	violentXdem					0.388***
						(4.829)
	propertyXdem					-0.160***
						(-3.286)
	drugXdem					0.0161
						(0.395)
	Constant	11.08***	-19.33***	-57.32***	-164.3***	-165.9***
		(6.541)	(-7.996)	(-22.28)	(-13.92)	(-13.79)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	1,420,074	587,095	579,632	554,812	554,812
	Number of Years	10	10	10	10	10
	R-squared	0.1755	0.2077	0.2295	0.2345	0.2347
(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1						

Table 3.13 – Regressions of Sentence Length on the Political Variable with Controls						
State Court Processing Statistics: 1990 – 2004						
All Cases (Trials and Pleas)						
		Dependent Variable: Sentence Length (in months)				
		(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)
dem		0.151***	0.118***	0.107***	0.0680	0.00142
		(4.499)	(3.027)	(2.744)	(0.845)	(0.0152)
Defendant Traits	male		13.55***	11.28***	11.38***	11.41***
			(20.20)	(17.40)	(17.53)	(17.71)
	black		5.768***	5.410***	5.459***	5.478***
			(6.694)	(6.314)	(6.130)	(6.144)
	ageatarrest		0.0376	0.109***	0.0791**	0.0785**
			(1.029)	(3.016)	(2.133)	(2.117)
Crime Characteristics	numconvcharges			0.00777**	0.00762**	0.00757**
				(2.168)	(2.087)	(2.075)
	violent			34.72***	35.58***	27.53***
				(21.51)	(21.60)	(3.496)
	property			2.729***	2.842***	-2.065
				(3.140)	(3.452)	(-0.612)
	drug			3.989***	3.100***	2.139
				(4.483)	(3.701)	(0.620)
Demographic Characteristics of the Jury/Community	pctblack				-0.0544	-0.0581
					(-0.438)	(-0.465)
	pcthispanic				-0.431***	-0.431***
					(-4.177)	(-4.180)
	incomepercapita				-0.000930***	-0.000933***
					(-3.231)	(-3.242)
	pctunemp				0.0721	0.0770
					(0.0830)	(0.0886)
	pctagriculture				0.834	0.852
					(0.708)	(0.725)
	pctmanufacturing				-0.286***	-0.286***
					(-2.776)	(-2.786)
	pctgovt				-0.546**	-0.550**
					(-2.034)	(-2.050)
	popdensity				-0.000306**	-0.000309**
					(-2.085)	(-2.085)
	pcthighschool				-1.034***	-1.029***
				(-3.135)	(-3.116)	
pctbachelors				0.434**	0.431**	
				(2.204)	(2.189)	
crimrate				-0.000751*	-0.000744*	
				(-1.908)	(-1.890)	
Interaction Terms	violentXdem					0.156
						(1.046)
	propertyXdem					0.0956
						(1.495)
	drugXdem					0.0194
					(0.300)	
Constant	6.959*	-10.91***	-21.41***	98.70***	101.9***	
	(1.832)	(-2.923)	(-5.281)	(3.427)	(3.554)	
State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	
Observations	57592	49064	49064	46181	46181	
Number of Years	7	7	7	7	7	
R-squared	0.011	0.014	0.040	0.044	0.044	

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

Table 3.14 – Regressions of Sentence Length on the Political Variable with Controls						
National Judicial Reporting Program Data: 1986 – 2004						
All Cases (Trials and Pleas)						
		Dependent Variable: Sentence Length (in months)				
		(3.1b)	(3.2b)	(3.3b)	(3.4b)	(3.5b)
	dem	0.445***	0.308***	0.326***	0.446***	0.398***
		(43.92)	(15.69)	(17.09)	(12.20)	(8.348)
Defendant Traits	male		25.30***	18.62***	18.67***	18.72***
			(68.33)	(50.55)	(49.75)	(49.92)
	black		10.79***	10.38***	11.11***	11.12***
			(26.58)	(26.08)	(27.10)	(27.12)
	ageatarrest		0.0639***	0.266***	0.228***	0.232***
		(3.524)	(14.96)	(12.44)	(12.67)	
Crime Characteristics	numconvcharges			20.20***	20.10***	20.04***
				(27.15)	(26.86)	(26.79)
	violent			84.46***	85.81***	68.91***
				(116.6)	(115.1)	(19.35)
	property			9.323***	9.287***	11.47***
			(20.99)	(20.46)	(5.391)	
	drug			10.36***	9.807***	10.34***
				(27.66)	(25.41)	(5.463)
Demographic Characteristics of the Jury/Community	pctblack				-0.139***	-0.144***
					(-3.174)	(-3.268)
	pcthispanic				-0.760***	-0.756***
					(-16.12)	(-16.05)
	incomepercapita				-0.000557***	-0.000543***
					(-5.110)	(-4.967)
	pctunemp				1.017***	1.035***
					(3.749)	(3.810)
	pctagriculture				-1.728***	-1.721***
					(-6.427)	(-6.390)
	pctmanufacturing				0.643***	0.642***
					(10.16)	(10.14)
	pctgovt				-0.164*	-0.161*
					(-1.890)	(-1.853)
	popdensity				-0.000879***	-0.000933***
				(-11.88)	(-12.44)	
pcthighschool				-0.840***	-0.824***	
				(-7.527)	(-7.400)	
pctbachelors				0.384***	0.381***	
				(4.686)	(4.644)	
crimrate				0.000434*	0.000439*	
				(1.870)	(1.890)	
Interaction Terms	violentXdem					0.340***
						(5.036)
	propertyXdem					-0.0458
						(-1.186)
	drugXdem					-0.00896
					(-0.264)	
	Constant	18.62***	-14.38***	-74.84***	-5.563	-5.346
		(9.733)	(-6.213)	(-28.59)	(-0.518)	(-0.491)
	State and Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
	Observations	2,611,241	923,352	911,550	885,022	885,022
	Number of Years	10	10	10	10	10
	R-squared	0.144	0.187	0.220	0.223	0.223

(Robust t-statistics in parentheses) *** p<0.01, ** p<0.05, * p<0.1

APPENDIX

Chapter Two's Description of Variables – Tort Data

totalverdict	total amount awarded to the plaintiff (if the award was nonzero)
dem	percent vote for the Democratic candidate for President in that county
pctpoverty	percent of county population below poverty level
pctblack	percent of county population who are black or African American
pcthispanic	percent of county population who are Hispanic/Latino
incomepercapita	county's income per capita
pctunemp	county's unemployment rate
pctagriculture	percent of county workforce employed in the agriculture sector
pctmanufacturing	percent of county workforce employed in the manufacturing sector
pctgovt	percent of county workforce employed in the public/government sector
popdensity	county population / county land area
pctold	percent of county population older than 65
pctbachelors	percent of county population (over 25) who have a bachelors degree
deathinjury	primary injury was death
backbody	injury primarily affects back and body, including bones, muscles, nerves, especially the spinal/disc/neck areas
limbs	injury primarily affects limbs, including bones, muscles, skin, and nerves therein
head	injury primarily affects the head and face, including bones, muscles, skin, and nerves
internal	injury primarily affects internal organs, including disease/parasites
psych	injury is emotional or psychological in nature
otherinjury	injury does not fit well with the above classifications, including injuries affecting genitalia, unspecified skin locations, unspecified burns, loss of services

Chapter Three's Description of Variables – Crime Data

convict sentence	coded 1 if the defendant was convicted, 0 if acquitted sentence length determined by the jury (in months)
dem	percent vote for the Democratic candidate for President in that county (in that election cycle)
male	dummy variable: 1 if defendant is male, 0 if female
black otherwise	dummy variable: 1 if defendant's race is African American, 0 otherwise
ageatsent	defendant's age at sentencing
numconvcharges	number of felony conviction charges/counts
violent	most serious conviction offense is a violent crime (includes murder/manslaughter, rape, robbery, assault, and other violent crimes)
property	most serious conviction offense is a property crime (includes burglary, larceny, fraud/forgery)
drug	most serious conviction offense is a drug related crime (i.e. possession or trafficking)
pctpoverty	percent of county population below poverty level
pctblack	percent of county population who are black or African American
pcthisp	percent of county population who are Hispanic/Latino
incomepercapita	county's income per capita
pctunemp	county's unemployment rate
pctagriculture	percent of county workforce employed in the agriculture sector
pctmanufacturing	percent of county workforce employed in the manufacturing sector
pctgovt	percent of county workforce employed in the public sector
popdensity	county population / county land area
pcthighschool diploma	percent of county population (over 18) who have a high school diploma
pctbachelors degree	percent of county population (over 25) who have a bachelors degree
crimrate	county's crime rate
state	state dummy variables
time	year dummy variables
violentXdem	violent * dem
propertyXdem	property * dem
drugXdem	drug * dem
weaponXdem	weapon * dem

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