Dissertations

Graduate College

12-2016

Who Controls Immigration Judges?: Towards a Multi-Institutional Model of Administration Judge Behavior

Mark Richard Beougher
Western Michigan University, mark.r.beougher@wmich.edu

WHO CONTROLS IMMIGRATION JUDGES?: TOWARDS A MULTI-INSTITUTIONAL
MODEL OF ADMINISTRATION JUDGE BEHAVIOR

by

Mark Richard Beougher

A dissertation submitted to the Graduate College
in partial fulfillment of the requirements
for the degree of Doctor of Philosophy
Political Science
Western Michigan University
December 2016

Doctoral Committee:

    Mark Hurwitz, Ph.D.
    J. Kevin Corder, Ph.D.
    Ashlyn Kuersten, Ph.D.
    Robert Howard, Ph.D.

WHO CONTROLS IMMIGRATION JUDGES?: TOWARDS A MULTI-INSTITUTIONAL MODEL OF ADMINISTRATION JUDGE BEHAVIOR

Mark Richard Beougher, Ph.D.

Western Michigan University, 2016

Numerous studies have shown dramatic variations in the rates that immigration judges grant asylum. What these studies have failed to adequately explain as of yet is why? In attempting to understand the behavior of immigration judges in asylum cases, scholars have generally taken one of two approaches, either examining immigration judge behavior through top-down bureaucratic models or with models developed through the study of the judiciary. From these studies we have learned that similarly situated asylum applicants have different chances of success based merely on the ideological leanings of the judge who decides their case. We also have learned that judges respond to top down extraneous pressures by granting more or fewer asylum petitions. What we don't know is how the individual preferences of immigration judges are affected by extraneous factors. I believe that the primary reason previous studies have been deficient is their failure to adequately consider how immigration judges' decisions are influenced by their status as administrative law judges who are tasked with making hundreds of verdicts a year. As administrative law judges, immigration judges sit within a web of oversight that is unlike any other judiciary. They have a caseload that is more akin to a street-level bureaucrat than most members of the judiciary. However, as members of the judiciary they are different from the type of agents who are the subject of most top-down studies of bureaucracies. I hypothesize that in order to fully understand the behavior of immigration judges in asylum

cases, any model must contain a combination of attitudinal, institutional, legal and exogenous variables which influence immigration judges in their decisions to grant or deny asylum.

Recognizing that immigration judges sit within a rather unique context, a multi-institutional approach examining immigration judges as both administrative law judges as well as street level bureaucrats working within a legal context provides the best explanation for why these judges behave so differently. The results confirm a number of previous findings. Immigration judge ideology does influence the rate that they grant asylum. Political, economic and social factors also influence whether immigration judges grant asylum. The results also point to a number of new conclusions that can be drawn about the behavior of immigration judges in particular as well as administrative law judges in general. Like street level bureaucrats, as caseload increases, the influence of individual ideology in the decision process also increases. Moreover, the results reveal that judges with different ideological leanings respond to the same variables differently. Factors that might increase the likelihood that a liberal judge will grant asylum, actually decrease the likelihood that a conservative judge would grant asylum. These results have important policy as well as legal ramifications. Furthermore, they call into question generally held notions of both judicial and bureaucratic behavior and, as such, provide an important contribution to the discipline.

ACKNOWLEDGEMENTS

The first people that I need to thank are my family. My mother who has always shown more faith and confidence in me than I deserve and whose support is the primary reason that I completed my dissertation. You have always been my rock mom. My father, who has been my moral and intellectual compass. My interest in asylum and refugee issues largely comes from watching you work to protect the children of Michigan and Maine for your entire career. I have always hoped to live up to your example. My sister who has been instrumental in me making it this far, academically. Whether it was the help in editing this dissertation (and countless other papers) or letting me crash on your floor, I have known that I can always count on you. My children, Claire and Simon, who inspire me to work to make the world a better place and whose love and affection I have leaned on during the darkest of times. You are my entire world.

I also need to thank all of the members of my dissertation committee and in particular my advisor, Mark Hurwitz. Mark, thank you so much for providing the steady encouragement that I needed throughout this too long process. It means a great deal that you never gave up on me. Kevin Corder, I do not know how I would have been able to handle the myriad of statistical and structural issues of this dissertation without your thoughtful and consistent assistance. Robert Howard, I owe two levels of gratitude. First for your work on Administrative Law Judges that inspired the model that I used in this dissertation and second for your willingness to participate on a committee for a graduate student you did not know. Ashlyn Kuersten, thank you so much for all that you have done for me since I first entered the program. Your commitment to teaching and work on social justice issues has been an inspiration to me.

I must also thank several people who lead me to explore asylum and refugee issues. Professor James Hathaway, whose class on asylum law first sparked this interest. The Archdiocese of Detroit's Immigration and Asylum Clinic which gave me my first opportunity to work with people seeking refuge. Zef Pergega, my first client, whose integrity and courage won out in the end.

Acknowledgements – Continued

I would also like to acknowledge that I am completing this dissertation at an extremely dark and terrifying time for immigrants in the United States. I am writing this acknowledgement three days after Donald Trump has been elected as president of the United States. His anti-immigrant rhetoric, promises to deport millions of undocumented residents and plans to deny the protections of asylum to those of the Muslim faith are antithetical to this country's legal and moral obligations. I decided to write my dissertation on the asylum process because I believed that it is one of the noblest experiments in the history of the modern world. To think that a vast majority of the countries in the world have signed onto an agreement that requires them to provide protection to the neediest who reach their shores is almost incomprehensible in today's environment. This is an incredible example of the good that can be achieved through global cooperation. Unfortunately, across the world, countries are reneging on this obligation. A growing anti-immigrant wave is rising in the developed world. Rather than be a bastion against this wave, we have decided to bolster its force with the election of Mr. Trump. It is my intent to apply whatever skill and knowledge I have obtained to oppose the efforts of Mr. Trump and the forces of intolerance in the world.

Mark Richard Beougher

TABLE OF CONTENTS

Chapter

Table of Contents - Continued

Table of Contents - Continued

Table of Contents - Continued

Table of Contents - Continued

Table of Contents - Continued

Chapter

LIST OF TABLES

LIST OF FIGURES

CHAPTER I - INTRODUCTION

In 2006 the Romeike family removed their children from public school in Germany

(Romeike v. Holder, 718 F.3d 518 (6th Cir. 2013)),. As devout Christians they believed that the

secular nature of German public education undermined their children's faith. It was the

Romeike's hope that they could home school their children in accordance with their religious

faith. Unfortunately for them, German law prohibits home schooling.[1]. In the ensuing months the

local government attempted a number of methods in an attempt to get the Romeikes to follow

German law. These included levying significant fines, physically forcing the children to attend

school and threatening to remove the children from their home. Facing mounting financial

hardship and fearing that their children would be taken from them; the Romeikes decided to

leave their home.

In August of 2008 the Romeike family left Germany to come to the United States (718

F.3d at 530). Upon arrival, the Romeikes asserted that they were entitled to protection under the

asylum laws of the United States based upon claims that the German government had targeted

them for punishment because of their religious faith. Specifically, they claimed that in seeking to

enforce the law banning homeschooling, the German government was targeting them because of

their conservative religious views.[2] On January 26, 2010 they were granted asylum by

immigration judge Lawrence Burman in Tennessee.

On its face the Romeike case might seem unremarkable. Just like thousands of other

petitioners whose cases are heard every year, in immigration courts around the country, the

Romeikes were seeking the protection afforded by asylum. Judge Burman, like dozens of other

---

[1] German officials claim that the law promotes integration into society.
[2] The Romeikes had faced mounting fines as well as at least two attempts to physically force the children to attend school.

immigration judges handing down decisions on that particular day was tasked with the job of determining whether the petitioners before him qualified for this protection. Although the persecution faced by the Romeikes differs from torture or the threat of death that is stereotypically associated with the grant of asylum, the image of a government taking away someone's children is similarly chilling. However, despite the apparent normalcy of the Romeike case, if you take the time to examine its facts, it is apparent that judge Burman's decision was far from ordinary. Petitioners like the Romeikes had been denied asylum repeatedly in immigration courts across the United States. What then can explain the actions of judge Burman? Was this simply a case of a judge basing his decision on personal preferences or attitudes? Was he responding to political pressure from Congress or the Department of Homeland Security? Did public support for the Romeikes influence his decision? Is he simply a rogue judge who is no way indicative of the behavior of other immigration judges? Despite a number of efforts to explain what factors influence the behavior of immigration judges in asylum cases, no model has adequately explained the factors that influence this important decision. This dissertation offers a unified model of administrative lawmaking which reveals that a multitude of factors come into play when an immigration judge makes a decision to grant or deny asylum.

Immigration Judges and Asylum

Each year tens of thousands of people like the Romeikes, petition for the protections afforded by asylum law in the United States. These petitioners come from countries all over the world. Some of them merely apply for asylum to prolong the time period before they are forced to leave. Many others are fleeing tragic circumstances in their home countries. In order to obtain asylum protections in the United States an applicant must convince an immigration judge that he/she is:

unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion (US 27 Jan. 2006, 3; US n.d.g; US May 2006, 1).

While the determination whether someone meets this definition might at first appear to be based upon a relatively straightforward legal analysis, the unique position of immigration judges within the federal bureaucracy complicates matters significantly.

Unlike federal district and appellate judges, who are governed by Article III of the US Constitution, immigration judges belong to a subset of the judiciary who work within the federal bureaucracy as administrative law judges (ALJs).[3]. Because of their position within the federal bureaucracy, ALJs must deal with an array of constraints unheard of by Article III judges. One of the primary differences is that as federal bureaucrats, ALJs are under the control and supervision of the executive branch. As such their direct supervisors are the officials of the agency whose actions they adjudicate. Because of this position, administrative law courts are often referred to as "quasi-judicial," in that they lack the freedom from direct influence that characterizes federal district and appellate courts (Marshall, Merrill, Shane, 1992).

Immigration judges serve as the primary adjudicators of immigration claims brought in the United States. As such their principal role is in helping to fulfill the immigration based policy goals of the agency they work for, the Department of Homeland Security.[4]. Immigration policy in United States is based upon the central goal of controlling who can legally reside in the country. Who gets in is as much a practical as it is a political question. It must be practical

---

[3] Article III of the Constitution states "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.". Article III federal courts below the Supreme Court are established by Congress but operate without direct interference by the executive or legislative branches.

[4] Following 9/11, control over immigration decisions was placed under the Department of Homeland Security.

because of the need of US businesses for foreign labor and because there are many more people

who want to come than who we want to take. It is political in that different domestic and foreign

policy interests are served or thwarted by these decisions. Asylum applicants like the Romeikes

have the potential to cause both practical and political problems for immigration policy makers.

This potential to turn immigration policy on its ear is one of factors that makes the adjudication

of asylum cases more complicated than what it would initially appear.

Why the Romeike's Decision Was Such a Surprise

If the decision whether to grant asylum to the Romeikes was based entirely on legal

considerations, it would have been a relatively easy one. Immigration judges are supposed to

follow precedent when making their decisions.[5] In the Romeike case, a review of the applicable

precedent should have lead immigration judge Burman to deny their claim. Up to the point that

the Romeikes applied for asylum, all similarly situated asylum seekers from Germany had been

denied protection. (718 F.3d at 530). The reasoning behind these previous decisions focused on

the nature of the German law requiring students to attend school outside their homes. Because

this law applied to everyone equally, did not have a discriminatory intent and served a rational

policy goal, previous immigration judges had refused to grant asylum to previous petitioners

with similar stories as the Romeikes. When judge Burmon granted asylum to the Romeikes he

ignored these previous decisions.

The Romeikes appear to have been on the wrong side of practical considerations of

immigration policy as well. Granting asylum to the Romeike family had the potential to open the

---

[5] A branch of judicial political science scholars as well as the legal profession argue that judicial
behavior can be explained through an understanding of precedent as it applies to the factual
scenario of a particular case. This has been labeled the Legal Model of judicial behavior. If this
model holds true the judge assigned to the Romeike case would only have to examine how
judges decided similar cases in the past and make the same decision. The relevance of the legal
model to asylum decisions will be discussed in later chapters.

door for asylum to all similarly situated people in the world. If one can get asylum merely by

trying to home school one's child in a country that has restrictive homeschooling rules, it is

possible to imagine that tens of thousands of people will be applying for it in the future. Since

such people would not necessarily fill the job vacancies that immigration policy is designed to

deal with, there is the possibility that a mass of Romeike like immigrants would leave no room

for the types of immigrants our economy needs.[6] While officially such considerations should not

play into decisions to grant asylum it is difficult to see how those in charge of making

immigration policy would not be aware of the possible effect of providing the Romeike family

asylum.

The Romeike case also had the potential to cast one of our closest allies in a less than

favorable light. If the United States grants asylum to the Romeikes it is essentially stating that

Germany, one of the most progressive countries in the world, is engaging in systematic

persecution of some of its citizens because of their religious beliefs. Not only would such a

decision fly in the face of any number of human rights organizations' evaluations of the German

government, there would also be real foreign policy ramifications for the United States.[7] It would

be naïve to believe that such considerations do not occur to the immigration judges as well as

their superiors when deciding whether to grant or deny asylum.

Ideological factors also did not appear to bode well for the Romeikes. The ideology of the

current president and the officials he appointed to supervise immigration judges might result in

some types of cases being given priority while others are ignored. Similarly, the ideology of the

---

[6] Although the United States places caps on the total number of asyllees it will accept each year, such caps have no practical effect on persons who are present in the United States at the time that they file for asylum,

[7] One need only look at the recent uproar in the United States over Russia's decision to provide refuge to Edward Snowden for an example of how asylum decisions carry real world political consequences.

current legislative committees which are charged with overseeing immigration issues might play a role. Although, several groups within the United States believe that the ability to home school is a human right that the US government should protect, this does not necessarily mean that the Obama administration shares these views. Exacerbating the problem for the Romeikes is the fact that a vast majority of homeschoolers in the United States are religious conservatives who do not make up a key constituency of the Democratic party. While such political considerations are not supposed to be relevant in decision to grant or deny asylum, the fact that immigration judge Burman's bosses work for president Obama makes it difficult to see how they would not.

Thus, based upon several factors, it appears that the Romeikes should not have been granted asylum. Legal precedent supported denying them asylum. The close ties between the United States and Germany seemed to make it unlikely that they would be granted protection. Germany has a very good human rights record and asylum petitioners from countries with very good human rights records rarely are granted asylum. The current US administration is not particularly close to the home schooling community and thus has little incentive to intervene. All this should have created a very easy decision for the immigration judge. However, when the case was brought before Judge Burman, he appeared to buck precedent and policy concerns in granting the Romeikes asylum.

How Does one Explain the Behavior of Judge Burman?

Although precedent and an array of political forces seemed to push for a denial of the Romeike's claim, a judge sitting in Tennessee decided to provide them protection. Judge Burman claimed that the Romeikes were eligible for asylum because, (1) they had a well-founded fear of future persecution on account of religion, and (2) they were members of a particular social group, namely German parents who homeschool for religious reasons (718 F.3d at 531). The fact

that the Department of Justice took the unusual step of appealing a grant of asylum reveals that

Judge Burman's superiors within the executive branch were not in favor of the decision.[8].

Additionally, although the decision was well reasoned, it was not well supported by existing case

law. In fact, it was eventually overturned by first the Board of Immigration Appeals and then the

6th Circuit court of Appeals.[9]. If the judge was not following precedent or the apparent desires of

his superiors, how can we explain his actions?

The answer appears to be that Judge Burman was not as constrained by precedent or

institutional constraints as his position as an ALJ would lead one to believe. An examination of

his record on asylum cases conducted by the Transactional Records Access Clearinghouse

(TRAC 2012) reveals that he is consistently sympathetic to a wide range of petitioners. He has

granted asylum to 64.7% of the asylum petitioners who have been in front of him in the last. 5

years (TRAC 2012). This is a significantly higher rate than the national average of around 50%

denial. One might be tempted to explain judge Burman's behavior in this case as merely the

actions of an outlier with sympathies towards asylum applicants. However, a comparison of his

grant rates to the immigration judges in his same jurisdiction as well as other jurisdictions across

the country reveals a surprising level of variation.

Immigration judges, whether they preside over cases in the same court or across the

country, grant asylum to petitioners at surprisingly divergent rates (TRAC 2012). The average

---

[8] Since DOJ attorneys are forced to respond to tens of thousands of appeals from denial of relief in immigration courts, they rarely devote the resources necessary to appeal cases here relief is granted.

[9] The BIA decision and the subsequent decision of the 6th Circuit Court of Appeals to uphold the BIA decision denying the Romeike's asylum claim, has lead to the belief that an animus towards religious conservatives forms the back bone of the government's efforts to deny protection to the Romeikes. This is despite the fact that two of the three judges 6th Circuit judges who unanimously upheld the decision of the BIA were nominated by George W. Bush.

grant rate for asylum applicants in Memphis, where Judge Burman presides is less than 45% (TRAC 2012). The average grant rate for New York City is over 60%. Even within jurisdictions one can see huge variations. For example, in New York City, Judge Alan Vomacka grants asylum to 33.4% of the petitioners whose cases he hears, while judge Terry Bain, who hears cases in the same court house, grants asylum to 94.8% of the claims she adjudicates. Given that these cases are assigned randomly, it is impossible to conclude that the variation is based solely on the merits of the cases presented to these judges (Ramji-Nogales, Schoenholtz and Schrag 2008). Nor could one argue that judges presiding over cases in the same court during the same time period would face significantly different political or social pressures. Based upon these dramatic variations, it is apparent that at least one of the primary factors that determine whether an asylum applicant obtains protection is the judge deciding the case

Reexamining the Romeike case in light of the divergent grant rates of immigration judges around the country reveals that they were extremely lucky to have their case before a judge who was sympathetic to their plight. Their case also presents a number of troubling questions about the behavior of immigration judges. Immigration judges exist in an environment in which they should face any number of political and social pressures yet they appear to respond to these pressures differently. We know that similarly situated petitioners have different chances of success based solely on whose court they are assigned to. We also know that these judges respond to extraneous pressures by granting more or fewer asylum petitions. What we don't know is how the individual preferences of immigration judges are effected by extraneous factors. Would Judge Burman have decided the Romeike case differently during the Bush as opposed to the Obama administrations? What would have happened if the Romeikes were from Canada

rather than Germany? In essence this dissertation seeks to examine how the interplay of personal and external factors influences how immigration judges make their decisions.

What is Behind the Variance in Asylum Grant Rates Between Immigration Judges?

In attempting to understand the behavior of immigration judges in asylum cases, scholars have generally taken one of three approaches. The first is through the use of principal agent theories developed in the study of bureaucracies (See e.g. Ramji-Nogales, Schoenholtz and Schrag 2007). In the months following 9/11 for example, success rates for asylum applicants plummeted as security fears gripped the country (Lipko 2002). This applied to both the sympathetic as well as the more hardline immigration judges (TRAC 2002). Similar changes to individual immigration judge behavior can be seen after the switch from the Bush to the Obama administration. The national average grant rate in 2008, the last year of President Bush's term in office was less than 40%. In the first four years of President Obama's administration the grant rate has risen to 50% (TRAC 2013). Studies of asylum decisions in immigration courts have also revealed that the behavior of immigration judges is often constrained by domestic and international policy concerns (Saleyhan & Rosenblum 2008). Using principal agent models, developed in the study of bureaucracies, scholars have shown that officials within the executive and legislative branches are able to promote policy goals through exerting influence on how asylum decisions are made.

The second approach that has been used to attempt to explain the variance in immigration judge decisions in asylum cases is to examine the decisions of immigration judges using models formed through the study of the judiciary (See e.g. Keith, Holmes, and Miller, 2013). Scholars applying attitudinal approaches to the study of immigration judge behavior have concluded that

the variation in grant rates between judges can be explained by the personal preferences of judges (Ramji-Nogales, Schoenholtz and Schrag 2007). In these studies, immigration judges who are appointed during democratic regimes, or who had backgrounds in representing immigrants, are more likely to grant asylum than those appointed during Republican regimes or with backgrounds in enforcement. While these studies reveal a connection between personal characteristics and likelihood to grant asylum, they do not adequately explain why the acceptance rate of individual immigration judges fluctuate over time.

The third approach taken in previous studies has examined the role of legal factors on a petitioner's chance to receive a positive decision from an immigration judge. Factors such as the human rights record of a petitioner's country and whether the petitioner was represented by counsel can play as important a role in determining the chance that an immigration judge grants asylum as his or her personal characteristics (TRAC 2013).

Developing a Better Model of Asylum Adjudication

Since the personal characteristics of the judges, the policy goals of legislative and executive officials and legal factors all appear to affect the chances that a petitioner is granted asylum, any attempt to truly understand their behavior requires a more complex model than those previously used. I believe that the failings of previous studies of immigration judge behavior in asylum cases are based upon the failure to develop a model which takes into account the fact that immigration courts operate under both judicial and bureaucratic rules. Thus in order to understand their behavior we need to apply models developed to understand similar institutions. Fortunately such models have been developed in the study of street level bureaucracies and administrative law courts.

Administrative Law Court Models

Administrative law judges hand down literally thousands of decisions ranging from clean air to labor regulations every year. These decisions occur almost completely outside the scope of public inquiry yet have large effects on how many of us lead our lives. Little is known of the background of most of the Administrative Law Judges (ALJs) who preside over these courts nor has much study gone into the factors that shape their decisions. This lack of understanding is based largely upon the unique characteristics of these institutions. Embodying characteristics of both bureaucracies and the federal judiciary, these courts operate in arenas that do not receive much public attention. Immigration courts are considered to be part of the administrative law court system.

Until relatively recently, research into ALJ behavior has suffered from the same limitations that currently plague the study of immigration judge behavior. Scholars have generally focused on judicially centered or bureaucratically centered models to explain the behavior of administrative law judges in a myriad of policy areas. Just as with the studies of immigration judge behavior previous ALJ focused research failed to integrate the two strains of research into models that can adequately explain behavior. To a large extent this failure has been addressed by Taratoot and Howard (2011) in their work "The Labor of Judging: Examining Administrative Law Judge Decisions." Through an analysis of Administrative Law Judge decisions as they relate to the National Labor Relations Board, Taratoot and Howard find that policy preferences, while playing a large role in determining decisions, do not explain everything. They examine the behavior of ALJs as being somewhat akin to that of Federal District Judges who, because of their place in the bureaucracy, also face additional political constraints that do not generally control judicial behavior. According to their research, the

11

unique position of ALJ's as quasi-judicial bodies within a bureaucratic structure both allow for a large amount of attitudinally based discretion but also temper the exercise of that discretion based upon a range of legislative, executive and judicial factors. In addition, they found that exogenous factors such as unemployment rates and public opinions towards unions also play significant roles in the behavior of these judges.

Street Level Bureaucracy Models

While the work of Taratoot and Howard provides a valuable template to model immigration judge behavior, I question whether the model will adequately explain how these judges handle asylum claims. Whereas most ALJs handle relatively small case loads, immigration judges in certain jurisdictions handle hundreds of cases each year. For example, the 37 National Labor Relations Board ALJs that Taratoot and Howard tested their model on issued 207 decisions in 2012 (NLRB Fact Sheet 2012). This averages out to fewer than seven cases per judge. Immigration judges in the busiest jurisdictions often issue dozens times that number in asylum cases alone each year.[10]. Add to that their other immigration cases and it will become apparent that these judges are performing tasks in drastically different environments. I theorize that in order to understand the behavior of immigration judges I will need to incorporate models developed to explain the behavior of street-level bureaucrats into the models of Taratoot and Howard. Studies have shown that factors such as work load and agency culture influence the exercise of discretion by street level bureaucrats (See eg. Prottas 1979). I intend to model such factors as they apply to immigration judge behavior in the handling of asylum cases.

---

[10] For example in 2012, Judge Van Dyke in New York handled over 1500 asylum cases in a five year period.

Towards a Multifaceted Approach to the Study of Immigration Judge Behavior

A multi-institutional approach examining administrative law judges as street level bureaucrats working within a legal context forms the framework of the research design for this dissertation. I hypothesize that a combination of attitudinal, institutional, legal, and exogenous factors influence Immigration judges in their decisions to grant or deny asylum. By combining aspects of models developed in the research of various levels of the judiciary, bureaucracies and administrative courts my hope is to be able to explain the tremendous levels of variation in the behavior of immigration judges in the adjudication of asylum cases.

Why this Research is Important

Gaining a greater understanding of ALJs behavior in general and the behavior of immigration judges in particular is of great importance for a number of reasons. The extent, nature and effectiveness of the constraints placed upon these judges by the executive, judicial and legislative branches are important within the context of the study of the scholars concerned with bureaucracies, the judiciary and political institutions in general.

Additionally, this research has the potential to provide greater insight into the behavior of immigration courts which have not received a great deal of scholarly attention. It is apparent from the above discussion that there are gaps in our understanding of the nature of judicial behavior in the asylum decision process. Previous research has been either primarily descriptive or has failed to examine the entirety of factors which could potentially influence immigration judges behavior. Furthermore, since previous studies of immigration judge behavior have failed to include years following the terrorist attacks of 9/11 and/or failed to consider decisions across administrations, there exists a hole in our understanding of how these events affected judicial

behavior. I intend to fill this gap by presenting a systematic analysis of immigration judge decisions through the application of models used in the study of other administrative law courts as well as bureaucracies and courts.

More broadly, this research has the potential to examine the behavior of individuals, whether they be judges, bureaucrats or both, who make decisions outside the public eye but whose behavior is ostensibly controlled by an array of formal and informal institutional and societal constraints. Based upon the rather unique situation faced by immigration judges in the asylum process, it is possible to examine the behavior of a lower level agent in a manner that previous studies have heretofore been unable to accomplish. This research seeks not only to determine whether some institutions have control over the behavior of a judge or bureaucrat, but also examine the extent to which this control varies in the face of historical and political forces.

Order and Substance of Chapters

Chapter Two will be used to describe the context under which immigration judges make decisions in general. This will include the various institutional actors that may influence immigration judge behavior in general and asylum decisions in particular. It will also present a historical discussion of asylum policy in the United States including a. discussion of the United State's obligations under international treaties. In particular it will focus on the tension between the forces attempting to influence the United States to honor its obligations under international refugee agreements with the desire of the United States government to use the asylum process to further political goals.

Chapter Three of the dissertation will involve a broad literature review of the research concerning bureaucratic and judicial behavior. It will also include a review of the literature concerning administrative law courts and the behavior of the judges who preside over them. It

will conclude with a discussion of how a study of immigration judge behavior will not only increase general understanding of ALJ behavior but also bridge a gap in the literature concerning the behavior of judges in asylum proceedings.

Chapter Four will establish the theoretical foundation for my dissertation. It will involve a discussion of rational choice as well as other theoretical approaches to the study of bureaucracies, courts as well as the hybrid institutional arrangement of administrative courts. Based upon these proposed theoretical relationships, testable hypotheses will be derived and tested in subsequent chapters.

Chapter Five Sets forth the design of my research. It includes a discussion of the methods used as well as setting forth the rational behind the variables that will be examined.

Chapter Six will commence the empirical testing of these hypotheses with an eye towards comparing the accuracy of models of bureaucratic behavior and judicial behavior to a multi-institutional approach based on the work of Taratoot and Howard (2012). I will examine the same data set covering asylum claims for the 16 years from 1997-2013. The dependent variable will be the decision to grant or deny protection.

In chapter Seven I intend to extend upon the work of Saleyhan and Rosenblum (2008) in order to determine whether immigration judges change the way that they make decisions when faced with political or societal factors. They found evidence that when Congress and the public focus on different aspects of the immigration issue, immigration judges give more weight towards either political or human rights variables. Because of the nature of their research, Saleyhan and Rosenblum did not include variables which examined the characteristics of either the immigration judges making each decision or the individual petitioners. My research will be the first to include these variables in a study that examines how political and social factors

15

influence the behavior of immigration judges.

Chapter Eight will examine how the terrorist attacks of September 11, 2001, changed how immigration judges made their decisions. I intend to show that not only did the events of 9/11 change the rates of success of asylum applicants, but also that it changed which factors immigration judges relied upon in making their decisions.

Chapter Nine will examine the extent that judges with different ideological backgrounds respond differently to the same political and social influences. I intend to show that judicial ideology not only influences the likelihood of a petitioner obtaining asylum, but also that ideology can predict which variables a judge most focuses on in making that decision.

Chapter Ten will conclude the dissertation. It will present a summary of the findings, discuss the policy implications of the findings as well as give ideas about possible future courses of research.

CHAPTER II - IMMIGRATION JUDGES AND
ASYLUM DECISIONS

Immigration judges are a type of ALJ, working within the Executive Office of

Immigration Review (EOIR), whose principal purpose is adjudication of immigration cases

(Executive Office of Immigration Review, Information Page, 2013). The primary function of the

EOIR and immigration judges is to conduct administrative proceedings to determine the

removability of individuals in the United States.

Persons claiming asylum in the United States generally apply in one of two ways. Either

they make a claim of asylum upon entering the country or they claim the right to asylum after

they have been ordered to leave. In either situation they first present their claim to asylum

officers of the Department of Homeland Security. If a petitioner's asylum application is denied

by one of these officers, their case is brought before an immigration judge. It is the task of

immigration judges to determine whether petitioners qualify for the protections afforded by

asylum. If an immigration judge denies a petitioner asylum the case can be appealed to the Board

of Immigration Appeals (BIA).[11]. Appeals of BIA decisions are brought to the federal circuit

court that has jurisdiction over the location of the immigration court.

Pursuant to the International Covenant on Refugees, the United States has an obligation

to provide refuge and/or asylum to all people who upon arrival on our shores prove that they

meet certain criteria.[12]. Since the grant of asylum is dependent upon a petitioner showing that

---

[11] The BIA examines all appeals from immigration courts. On September 25, 2002, the reforms
were instituted which allowed the BIA to affirm immigration judge decisions without issuing an
opinion

[12] Refugee law provides protection for persons who are outside their country of nationality
whose government is engaged in or unable to protect them from persecution based upon race,
religion, ethnicity or political opinion. (Convention on Refugee Status 1951)

she/he was fleeing from persecution that their own state was unwilling or unable to protect them from, it would seem natural that asylum petitioners from those countries with the worst human rights records would have the greatest chance of success. However, decisions of who should be granted asylum have historically been much more complex than simply adjudicating whether a petitioner faced persecution in their home country. As with many other aspects of immigration policy, decisions whether to grant or deny asylum often involve a number of political and social factors which muddy an otherwise relatively straight forward process.

The ability to choose who can and who cannot legally reside within a country is central to modern notions of state sovereignty.[13]. Decisions of who can and cannot legally enter one's country have been the subject of political contention in the United States since the late 19th century.[14]. Modern immigration law in the United States involves a complex balancing of political, economic and social goals. Traditionally immigration policy has focused largely upon meeting certain economic, primarily the provision of labor. At times it has also served political goals through the grant or denial of entrance to groups of people who are fleeing countries that are opposed to the United States. The asylum process has the potential to undermine the achievement of each of these goals because the decision to grant or deny asylum is not supposed to be a political one. Whether a person is granted asylum should be based upon whether that person meets the legal criteria set forth through international agreements. If a person from a country that has close economic and political ties with the United States meets these criteria, the United States must accept them even though this might cause political problems with the petitioner's home country. Additionally, since asylum petitioners are generally fleeing extreme

---

[13] See *U.S.* vs *Lem Moon Sing* (1895), establishing the right of the US to decide who can enter and stay in the United States.

[14] See for example the 1882 Chinese Exclusion Act.

hardship, they do not necessarily come to the United States with the skills or abilities to fill needed labor requirements. Thus, rather than helping to bolster the economy, they have the potential to be a drain upon resources.

In essence the history of the asylum process has largely been one of tension between the humanitarian ideals of protecting the persecuted and the political, economic and societal goals that immigration policy seeks to obtain. This tension places immigration judges in a position where they are tasked with making decisions based purely on the law while facing pressure from forces who often see the law as contrary to their overall goals. In general the literature concerning the asylum process in the United States reflects this tension. In this chapter I will present a chronology of major changes in the use and function of asylum from the 1940s through 2011 and a description of the major channels that actors in the White House, Congress and the courts use to influence the use of asylum and the outcomes of asylum cases.

The Two Edged Sword of Asylum Protection

The provision of protection to asylum and refugee applicants has historically presented both a problem and a potential opportunity to the state. Asylum is a problem in that it has the potential to essentially circumvent established immigration policy as well as cast potential allies in a negative light. People fleeing persecution are more likely to need assistance than they are to fill employment vacancies in the US work force. Also, a policy that provides protection based upon a neutral set of criteria makes no differentiation between applicants from friendly countries and those that are enemies. Because the international community looks critically upon those states that either persecute their own citizens or fail to protect their citizens from persecution, the provision of asylum has foreign policy implications. When the United States grants asylum to someone fleeing persecution from one of its allies, it has the potential to cause real foreign and

domestic problems. Casting the ally as a persecutor does not aid the relationship between both countries. Additionally, domestic human rights groups might raise questions about why the United States has close ties with countries that persecute their own citizens.

The Use of Asylum to Serve US Political Interests

While the provision of asylum has the potential to complicate domestic and foreign policy decisions, it has also proven to be a valuable tool for the United States. What better way to highlight the failings of an ideological adversary than to grant asylum to dissidents fleeing that country? In fact for decades the asylum system provided the United States with a propaganda tool against the Soviet Union. Beginning with the adoption of formal asylum procedures in the 1940's and for the next four decades the United States used the grant or denial of asylum for primarily political ends. During this period the United States made decisions regarding the grant or denial of asylum almost completely through the lens of the Cold War (Gross 1980). Those asylum applicants who were fleeing alleged persecution in countries that were ideologically and politically aligned with the Soviet Union were usually granted protection, while those that fled persecution from governments that were aligned with our interests were often turned away (Bon Tempo 2008). Asylum in the Cold War era was largely a political tool used to call attention to the abuses inflicted upon citizens of Communist controlled countries while at the same time shielding friendly but often worse human rights abusing allies from condemnation (McBride 1999).

Thus asylum applicants from Communist states were granted protection as an off shoot of the ideological battle of the Cold War, while petitioners fleeing US client states such as El Salvador were denied protections. During the early portion of this period the United States did not establish an official asylum policy, but rather relied on a provision of the Immigration and

20

Nationality Act, to grant "parole" to anyone who the attorney general wanted. This parole power was used to grant protections to a series of groups of people fleeing communist states, from Hungarians to Indochinese to Cubans (Bon Tempo 2008).

In 1965 the Immigration and Nationalization Act was amended to specifically define who qualified as a refugee as well as establish a quota for certain types of refugees. The only persons considered refugees under this definition were those who had fled a communist country or the Middle East because of fear of persecution.[15] Under the 1965 definition, a refugee was a person that fit into explicit geographic and ideological bounds; he or she must have fled a communist-dominated country, or the Middle East based on persecution or fear of persecution. From the end of World War II to 1979, the U.S. accepted close to 2 million refugees under this definition.[16]

During this time, officials in charge of making asylum decisions had little to no discretion in choosing whether to extend protection to persons fleeing persecution from countries with close ties to the United States. Rather than being centered around the provision of protection for the most needy and desperate people in the world, U.S. asylum policy from the end of the Second World War until the passage of the Immigration and Nationalization Act of 1980 was explicitly designed to serve political objectives (Helton 1984). During this time period, of the 2.0 million people granted asylum by the United States, all but two thousand were from communist

---

[15] Refugees, defined by the Immigration and Nationality Act as amended as: aliens... "(A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist of Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode...." (Section 203(a) (7))

[16] Congressional Research Service, *Review of U.S. Refugee Resettlement Programs and Policies: A Report Prepared at the Request of Senator Edward M. Kennedy* (Washington: Library of Congress, U.S. GPO, 1980), 131.

states (Bockley 1995).

Refugee Act of 1980 and Changes to Asylum Adjudication

Following the enactment of the Refugee Act of 1980, many refugee advocates believed that a new era had begun. The act brought a number of positive changes. By adopting the United Nations definition of a refugee and removing any references to communism or geographic origin, it potentially created a system in which the merits of a petitioner's case determined likelihood of gaining protection rather than relying on the politics of her/his home country. The act established formal procedures whereby asylum cases would be adjudicated in immigration judges. It also established procedures for Congressional oversight. Additionally, the 1980 Act established a formal differentiation between refugees and asyllees. Refugees were those people granted protection while they were still outside US jurisdiction. Asyllees were those who were granted protection once they arrived in the United States. Up until this point, the vast majority of those provided protection were outside the United States. Once the 1980 Act was signed this would change dramatically as the existence of a formal process coupled with political and other crises in neighboring states lead to a mass influx of people seeking asylum (Bockley 1995).

The 1980 reforms placed Immigration Judges in charge of making asylum decisions based upon objective criteria. Many scholars believed that the changes in policy would succeed in removing the political pressures on immigration judges to administer asylum in a manner that was complimentary to US foreign policy. (See e.g. Gilbert 1998). The belief was that if immigration judges were allowed to base their decisions on objective criteria, politics would no longer play any part in asylum decisions, which would in turn bring the United States more in line with the spirit of its obligations under international law. The results have been mixed.

While it is clear that the reforms succeeded in placing human rights concerns at the

forefront of most asylum decisions, it still has failed to remove all foreign policy considerations from the asylum process. Petitioners from countries with close ties to the United States still have a significantly lesser chance of obtaining asylum than petitioners from countries with strained relations. A 1988 study comparing asylum grant rates to Freedom House human rights scores found petitioners from countries with relatively modest human rights violations were receiving asylum at a higher rate than petitioners from countries with dreadful human rights records. (Gibney1988). This discrepancy was based upon the inordinate success rates for petitioners from Eastern European communist states which had relatively good human rights scores and the extremely low rates of acceptance of petitioners from U.S. allies, such as El Salvador, that had atrocious human rights records. During this period, U.S. immigration officials based their asylum decisions on the belief that accepting large numbers of asylum petitions from an ally would call attention to the fact that we were supporting a brutal dictatorship. At the same time, giving asylum to those who fled a communist state reinforced the Cold War narrative.

In addition to the failure to remove political considerations, the discretion afforded to immigration judges in making these decisions has created its own problems. Studies have revealed wide variation in asylum grant rates between immigration judges (TRAC 2013). This variation appears to be at least partly based upon the political ideology of the judge rather than the merits of the case (Salehyan and Rosenblum 2004). Thus it appears that by insulating asylum adjudicators from some of foreign policy pressure that characterized pre-1980 asylum policy, what has resulted was a situation where Immigration Judges have substituted their own policy preferences for that of the executive or Congress.

Post Cold War Asylum Adjudication: The End to Politically Based Asylum Decisions?

Many asylum advocates assumed that, with the end of the Cold War, asylum would no longer be used primarily as a political tool. Gilbert (1983) argued that "the end of bi-polarism has led to a decrease in asylum seeker's strategic and political value to States who had been eager to use their 'persecution' as a justification for confrontation." While Gilbert made this argument with the aim of creating a more comprehensive set of laws to provide protection to those seeking asylum, his premise, that the end of the Cold War will limit the role of politics in the asylum process, was based more on hope than any empirical. evidence. Gilbert never engaged in the type of analysis necessary to determine whether changes to the law of asylum actually resulted in substantive changes to the way asylum was adjudicated within the United States.

Subsequent quantitative examination of this subject has revealed that Gilbert's predictions regarding the end of politics in the asylum process were premature. A number of studies examining the grant of asylum following the end of the Cold War have found that politics political factors still play an important role in asylum decisions. Asylum petitioners from countries with close economic ties to the United States and those that receive its military support are granted asylum at a lower rate than similarly situated petitioners from countries that do not have these ties. (Salehyan and Rosenblum (2004). Conversely, petitioners from countries that have ideological differences with the United States are more likely to obtain asylum than petitioners from ideological allies.

Studies have also shown that the domestic political and social climate in the United States also affects how immigration judges behave in asylum cases. (Salehyan & Rosenblum 2008). These studies have shown that media and congressional attention to asylum issues has a range of

effects on judicial behavior depending upon the type of attention. When the media focused on asylum issues, asylum judges pay more attention to the humanitarian records of the applicants home country when making decisions as opposed to the policy goals of the executive. Congressional attention on the issue of asylum has two possible effects. If the attention is focused on enforcement, immigration judges focus more on the policy goals of the executive. When Congressional attention is focused on humanitarian issues then the human rights record of the petitioner's country of origin plays a greater role.

Adjudication of Asylum After 9/11: Attempts to Reign in Immigration Judge Discretion

The central gate keeping role of immigration judges reached public consciousness almost immediately following the fall of the twin towers (Greenhouse 2011). These attacks galvanized public opinion in the United States to an extent that had not been seen since the start of the Second World War. During the weeks and months following these events, Congress quickly passed a number of laws which expanded federal power and transformed how intelligence, defense and immigration were administered. Since all of the hijackers were legally within the United States, and since most of them had overstayed their visas, attention was immediately focused on perceived loopholes within the immigration system. To a very real extent, the problems within the immigration system were seen as significant factors in the failure to protect the United States from terrorist attack.

Several wide ranging reforms were quickly adopted in response to this assumed deficiency in immigration policy (Rosenblum & Kandel 2011). Included in these changes was the merging of the Immigration and Nationalization Service into the newly created Department of Homeland Security. Furthermore, in an effort to streamline the appellate process and reduce

the backlog of cases that was allowing thousands of immigrants to remain in the United States after their visas expired, changes were made to the Board of Immigration Appeals to allow for summary affirmations (Rosenblum 2011).

The Real ID Act, passed by Congress in 2005, was another example how security concerns could influence the behavior of immigration judges in asylum cases. This law placed additional requirements on petitioners to provide evidence that they feared persecution should they be forced to return to their home countries.

The effects of these changes have been widespread and significant. A number of studies have examined how immigration judge's decisions on asylum have been influenced by these reforms (TRAC 2013). Several have focused on changes in the ability of the executive branch to influence immigration judge's decisions (Salehyan et al. 2008, Ramji-Nogales, Schoenholtz, and Philip G. Schrag 2008, Schoenholtz 2005). These studies have shown that following the events of 9/11, U.S. policy towards overseas refugees has changed. Not only have the success rates of asylum applicants reduced but also the total numbers of overseas grants of asylum. The wars in response to 9/11 have also resulted in shifts in asylum policy. Despite the terrible human rights conditions in Afghanistan and Iraq, political concerns surrounding the war on terror have prevented the United States from granting overseas asylum to people from those countries (Waibsnaider 2006).

Variance Between Judges in the Grant of Asylum

As scholars have applied more advanced and rigorous quantitative approaches to the study of immigration judge behavior, they have found that in addition to the role of political and social factors in asylum decisions, there also is a wide variance in success rates between judges. These studies have found that petitioners in the same immigration court can see their probability

of success vary from 10% to 90% merely based upon which judge they are in front of (Ramji-Nogales, Schoenholtz, and Philip G. Schrag 2008, TRAC 2013)

A number of other studies have examined whether the events of 9/11 have resulted in lower rates of success for asylum applicants from Muslim majority countries. In his note, "Refugee Protection in the United States Post-September 11", Schoenholtz (2005) describes a significant decline in rates of asylum success in two major immigration courts, Houston and Los Angeles. Amnesty International has also documented a "significant backlash against refugees and asylum seekers due to their national or ethnic or religious beliefs."[17]

Asylum in the Age of Obama

In their most recent study of immigration judge asylum decisions, Transactional Records Access Clearinghouse (TRAC) found a significant change in the rates that immigration judges are granting asylum (TRAC 2013). TRAC has been examining the record of every immigration judge who handles at least one hundred asylum claims a year since 1994. Results for 2010 and 2011 revealed a substantial change in rates that immigration judges granted asylum. On average, judges in every court granted asylum at dramatically higher rates in those years than in previous years of the study. The only significant difference that the study revealed was an increase in the success rate of those asylum applicants who were represented by counsel during these years as opposed to previous years under study. The TRAC study does not include any variables related to congressional, executive or judicial changes which might have contributed to this change in immigration judge behavior.

---

[17] http://web.amnesty.org/library/print/ENGIOR51011201.

The Role of Institutions in Curbing Immigration Judge Behavior

Since asylum decisions have foreign policy consequences and often involve issues that have domestic parallels, there has always been a political element to the decision and the potential for interference from all three branches of government. Immigration judges make decisions amidst a complex web of political institutions. As employees of the Department of Justice the President is essentially their boss. Both the Senate and the House of Representatives have committees that exercise oversight functions over their actions. Additionally, all of their decisions are subject to judicial review.

Executive Branch Influence Over IJ Behavior

Through the control of the executive branch, presidents have the ability to attempt to influence all members of the bureaucracy. Different executive regimes have different domestic and foreign policy goals. As agents of an executive branch, one of the primary job responsibilities of immigration judges is to help meet these goals. Political appointees at the top of these agencies have every incentive to try to influence the decisions of immigration judges. While the Asylum Act of 1980 forbids direct political involvement in decisions to grant asylum there are a number of indirect ways that the executive might be able to manipulate the process.

One of the ways that the executive might be able to influence how IJs make their decisions is through the manipulation of State Department Country Reports. Previous studies have revealed how State Department Country reports are influenced by political factors (DeNeufville 1986). Since decisions to grant asylum are often based upon the human rights record of the petitioner's country of origin, and since most immigration judges rely upon State Department country reports for this human rights record, the executive has the capacity to influence decisions by influencing these country reports.

Additionally, the executive can potentially influence immigration judge behavior through the manipulation of advisory opinions of the Bureau of Democracy, Human rights and Labor. Up until 2012, this bureau within the State Department was required to issue an advisory opinion on each asylum applicant. There is at least anecdotal evidence that these recommendations are almost always followed by immigration judges. The ability to influence these recommendations would provide the executive with an even more direct route to influence asylum decisions.

At times the executive has taken direct steps to influence the behavior of immigration judges who were exercising their discretion in an egregious manner. Following 9/11 many immigration judges handed down blatantly biased decisions denying asylum. Responding to pressure from immigration rights advocates, attorney general Alberto Gonzales issued a harsh rebuke of immigration judges' treatment of asylum applicants (Liptak 2006).

Legislative Influence over Immigration Judge Behavior

Not to be left out, the Congress has often stepped in to attempt to control the behavior of immigration judges. Article I of the United States Constitution gives Congress the power to regulate immigration. Since asylum issues are a part of overall immigration into the United States, policies related to the grant or denial of asylum are often included in overall efforts to reform immigration. Depending upon the impetus of the reform effort, immigration reform is generally focused either on enforcement or humanitarian concerns. In those circumstances where legislative attention is drawn towards curbing the flow of illegal immigration, asylum regulations are often tightened as well (Saleyhan et al. 2002). In those periods where the legislature is focused on human rights issues, asylum regulations are sometimes modified to allow greater chances of success. Although the trickle of immigrants who arrive through the asylum process is

29

dwarfed by other avenues of entry, legislative attempts to reform immigration invariably have

real impacts success rates of those seeking protection.

Judicial Influence over Immigration Judge Behavior

Federal courts have also attempted to reign in the behavior of immigration judges who

stray too far from international and domestic obligations under the Refugee Treaty and the 1980

Asylum Act (Floss 2006).[18] Circuit courts have provided some of the most vocal criticism of the

behavior of immigration judges in the years following the terrorist attacks of 9/11 (Liptak 2005).

In an almost unprecedented decision, the Second Circuit. court of appeals removed. immigration

judges in two separate cases following particularly egregious actions towards asylum applicants

(Hurwitz 2010). While the sheer number of asylum cases being brought to the federal courts of

appeals has often limited the ability of these courts to overturn every erroneous decision,

appellate courts have often been instrumental in checking the politically motivated interventions

of the legislative and executive branches (Floss 2006).

How Constrained are Immigration Judges in the Adjudication of Asylum Claims

Based upon the above discussion, it appears that a large number of forces potentially

constrain immigration judges' ability to exercise their discretion in the grant or denial of asylum.

The literature on IJ behavior in asylum decisions presents a rather complex web. At different

times, institutional structures have either limited or increased the ability of these judges to act

independently. Historical events appear to play a role as well. Both the executive and legislative

branch appear to have at different times taken actions which can alter the manner in which

immigration judges can exercise their discretion. Where then does this leave us in creating a

---

[18] Treaties are given the same legal authority as the Constitution and violations of

model that will explain the how immigration judges make decisions? The apparent influence of political institutions on their decisions as well as their position within the federal bureaucratic system might lead one to believe that models formed through the study of bureaucracies would provide the best fit. However, the evidence of ideologically based decisions as well as the nature of their jobs as adjudicators suggests that models developed to study the judiciary. In order to develop a model that properly fits these uniquely situated actors it is first necessary to examine the relevant judicial and bureaucratic literature. This examination is undertaken in chapter 3.

CHAPTER III: ADMINISTRATIVE LAW JUDGES: BUREAUCRATS OR JUDGES?

Introduction

A central problem in representative democracy is how to ensure that policy decisions are responsive to the interests or preferences of citizens (McCubbins, Noll & Weingast 1987 p. 243) when administration lies outside the proper sphere of politics. Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices (Wilson 1887 p. 210)

When examining the problems associated with modern representative Democracy one is often faced with the contradiction ensconced within these two quotes. It is frequently opined that the problem with our current political system is that it is not responsive enough. One need only examine the discrepancy between public opinion polls in favor of issues such as same sex marriage or legalization of cannabis and laws and law makers who oppose these issues to provide evidence that our political decisions do not always appear to mirror the preferences of the public. [19] However, one need only look at the success of constitutional challenges to then popular Jim Crow laws in the American south during the 1960's to provide support for the conclusion that sometimes the desires of the majority should not always govern policy. The United States Constitution sets forth the institutional structure that is designed to provide a balance between popular control of policy decisions and the protection of certain minority rights from the politically powerful. In reality the balance has been extremely difficult to manage. Where this system becomes particularly muddled is in those situations where elected officials delegate policy decisions to unelected agents. To what extent are these agents supposed to act in accordance with the will of the people? To what extent are they supposed to protect minority interests?

---

[19] An April 4, 2013 Pew Research poll showed that for the first time a majority of Americans support legalizing Cannabis. A May 2013 Pew Research Poll showed for the first time that a majority of Americans favor same sex marriage rights.

Judges and Bureaucrats as Cornerstones of Liberal Democracy

In essence federal bureaucratic and judicial systems were established to address the fundamental flaw of modern liberal democratic governments, namely the potential that the politically powerful will dominate the politically weak. While the assumption of early democratic scholars was that by limiting the power of the government one could protect minority interests from the tyranny of the majority, history has also taught us that limits to the power of government can also protect majority interests from the economic and politically powerful elites who might exert inordinate influence in even democratic states[20] (See eg. Adams 1788). Our founders recognized that a truly democratic system, with no institutional constraints upon the power of the government, would result in a form of government in which the politically powerful can persecute the politically weak.

If the core of modern liberal democracies is limited government, the question then arises as to who will limit the government. It is naive to assume that the politically powerful will limit themselves. This is true whether political power rests in the majority or with the elite. In true democracies the majority believes it has the right to determine the fate of the minority because that is the basic definition of representative democracy. In aristocracies the elite believe that they know what is best for the masses because they are smarter and more accomplished. Our system of representative democracy combines the deficiencies of both of these forms of government as it relates to the protection of the politically weak.

Whereas Madison believed that by electing representatives the country could, "Refine and enlarge the public views, by passing them through the medium of a chosen body of citizens,

---

[20] Fear of "tyranny of the majority" has been part of political discourse in the United States since the late 18th century. However, scholars such as Olson(1965) have found that well organized minority interests often have greater ability to achieve their desired results than majority populations which oppose them.

whose wisdom may best discern the true interest of their country." (Madison, Federalist Paper No. 10) He also recognized that the transfer of control from the many to the few did little on its own to ensure that the interests of the politically powerless are protected. The need to protect against "the aggressions of interested majorities on the rights of minorities and of individuals," formed the basis of Madison's support for a Bill of Rights which would limit governmental power. Unfortunately, even the great accomplishment of getting these rights added to the Constitution did little to guarantee that the rights of the politically weak would be respected. So long as decisions as to whether a governmental action violated the Constitution was in the hands of elected officials, the concerns of those who did not hold political power would not be protected. When majorities take over the legislative and executive branches, their concern is primarily for the maintenance of the majority, not the protection of the minority. Similarly, when groups representing the politically powerful gain control over aspects of the state, their actions are centered around exploiting this control for themselves rather than the masses.

The Need for Non-Elected Decision Makers

Thus, history has taught us that since the political process cannot guarantee limited government, those guarantees must be outside of the political realm. In the form of the federal judiciary we accomplish this through nominations rather than elections.[21] In the form of the bureaucracy we accomplish this through reliance on professional hiring requirements based upon expertise rather than appeal at the ballot box. We attempt to limit our concerns over the anti-democratic nature of these powerful institutions through our faith in expertise as a source of wisdom. The idea that wisdom often comes not from the masses but from the educated elite is thus enshrined in modern democracy. As a result we have placed our faith in unelected experts as

---

[21] The wisdom of this faith in the objectivity of the judiciary will be considered in subsequent discussions of judicial behavior framed by the work of Segal and Spaeth (1993)

last lines of defense to ensure that the politically powerful respect the limits of government and the minority interests the Constitution enshrines.

In both cases, independent judges and a professionalized bureaucracy are given the power and discretion to make decisions in a sphere at least ostensibly separated from the demands of the political process. By insulating both bureaucrats and judges from the demands of getting elected, it is believed that they will be free to make decisions based upon rationally sound principles, rather than the irrational desires of the populace. In this idealized vision, judges are seen to be driven by the presence of centuries of precedent encapsulating the wisdom of generations of legal experts. Professional bureaucrats, protected from political meddling, are specialists who make decisions based upon sound, scientific analysis as opposed to the demands of an ill-informed citizenry. Based upon this vision of the role of bureaucracies and the judiciary, the power of the modern state cannot be left solely in the hands of politicians, precisely because these politicians are too accountable to the people.

Independence as Blessing and Curse

From this basic idea of these institutional arrangements we see both the blessing and curse of placing power in the hands of individuals who are not accountable to the people. By allowing these actors the space to make decisions without facing political repercussions, we hope to create a situation where well-educated and experienced people can make the type of rational yet unpopular decisions that are too risky for politicians to make. In this approach judges and bureaucrats are provided the discretion to make decisions that are guided by professional norms rather than political concerns. Judges are tasked with the fundamental job of interpreting the constitution, a job that is difficult to accomplish for people whose primary goal is to get reelected. The US Constitution protects minority interests from the majority, while politicians

35

need to make the majority happy in order to win elections. Thus we have developed, at least on the federal level, a system whereby extremely qualified. people are sheltered from concern over the next election and given the task of interpreting laws and the Constitution according to impartial legal principles.

Similarly, as the power of government increased throughout the 19th and 20th centuries, it became apparent that the instruments of this state power were too often used to serve the purposes of the political parties in power. The excesses of Tammany Hall and scandal plagued administrations of Harding and Grant, revealed that the spoils system, wherein jobs within the government were given to political supporters of the party in power, lead to incredible levels of waste, corruption and unequal distribution of state resources. An independent professional bureaucratic work force, protected from politically motivated reprisals, was designed to remedy such excesses.

The problem with both of these arrangements is that the politically powerful want to have policy reflect their preferences. Whether the politically powerful are the majority or those who use wealth or other sources exert disproportionate control over political resources, they still demand that the political process produce results that are in keeping with their desires. When this does not occur, political pressure rises to reign in the discretion of the judiciary and the bureaucracy. Unfortunately political pressure which attempts to make these institutions more accountable to the politically powerful undermines the professionalism which forms the foundations of these institutions. This debate between reliance on the professionals to make decisions or allowing decisions to be controlled through the political process shapes much of the scholarship involving bureaucracies and the judiciary.

Policy Decisions Based upon Personal Preferences Rather than Expertise

A troubling third option also emerges that complicates the professional versus political debate. What if removing outside political pressure from judges and bureaucrats does not lead to decisions based upon the objectively rational standards of their profession but rather just allows the bureaucrat or judge to substitute his or her political preferences for that of the majority? This is problematic in that instead of insulating important decisions from political pressure, it merely replaces the political process with the policy preferences of unelected individuals. If by providing the level of autonomy needed to exercise discretion we are giving these actors the ability to make decisions based upon their own preferences, we have created a system of petty dictatorships amidst our democracy. As scholars of the judiciary and bureaucracy have examined the behavior of these institutions it has become apparent that the attitudes of the actors more so than politics or professionalism influence their decisions (Segal & Spaeth 1993).

The primary goal of this chapter is to examine how theories developed to explain the behavior of judges and bureaucrats can help to understand the behavior of ALJs in general and immigration judges in particular. Since ALJs occupy positions that straddle the bureaucratic and judicial worlds, any study of their behavior must examine research from both of these worlds. From this literature review I will build my model of ALJ behavior.

Understanding Immigration Judge Behavior through the Lens of Previous Studies of Judicial Behavior

Legal vs. Attitudinal Models of Judicial Behavior

Judicial scholars have recognized that judges are far from the neutral arbiters of justice they are so commonly mythologized as. Rather, they have policy goals which they seek to meet within the context of the institution in which they work. The first and most influential work on the effects of policy goals on judicial behavior was conducted by Jeffrey Segal and Harold

Spaeth (1993). Their work presented testable empirical evidence that judicial behavior on the United States Supreme Court is a reflection of the policy preferences of the justices. They were able to show that at least in regards to highly politically salient cases on the US. Supreme Court, policy preferences explained judicial behavior more so than precedent. In other words, liberal judges voted more liberally than conservative judges on a range of issues. While this study was ground breaking it had a number of limitations. It was limited as to how the ideology of justices was determined, largely relying on secondary sources to estimate preferences. Additionally it was limited due to the extremely narrow range of situations that it applied to. The attitudinal model as laid out by Segal and Spaeth only applied to a small sub set of the judicial system, the Supreme Court, only on certain salient issues, and only on final votes on the merits.

Although limited in some ways, Segal and Spaeth (1993) spurred an incredible wave of research into how scientific approaches in general and rational choice in particular could shed light into the study of the courts. Although Segal and Spaeth do not refer to their study as being based in this theory, it is apparent that the attitudinal model is a simple rational choice model..[22] As with Downs (1957), they sought and found what they determined to be a unifying goal which motivated the behavior of Supreme Court justices, namely the desire to achieve preferred policy outcomes. Also like both Downs and Olson (1965), they largely ignored the role of institutional constraints in their model. Segal and Spaeth argued that they could do this because Supreme Court justices have life tenure, do not seek higher office, cannot be removed (essentially) and have virtually no chance of being overturned and set the Court's agenda. While subsequent studies generally have failed to refute Segal and Spaeth's findings regarding Supreme Court

---

[22] But see Rohde & Spaeth (1976), which poses an attitudinal approach based upon rational choice theory.

votes on the merits, interesting questions remained regarding other aspects of judicial decision making where institutional constraints may be more present such as in other courts.

One of the central assumptions that forms the basis of the attitudinal model of judicial behavior is the belief that at the level of the Supreme Court of the United States, institutional constraints are so diminished that judges are essentially free to vote based upon their sincere preferences. From this central idea of judicial behavior developed an essential corollary, if Supreme Court Justices are free to behave in accordance with their preferences because they are largely free from institutional constraints, other levels of the judiciary will be increasingly less free to act in accordance with their preferences as the level of institutional constraints upon them increases. A number of scholars have examined this assumption.

Applying the Attitudinal Model to Lower Courts

Studies have shown judicial behavior below the level of the US Supreme Court also have shown both the prevalence of attitudinally based behavior and the influence of institutions in constraining this behavior. State Supreme Court justices make decisions based upon their ideological preferences even in the presence of institutional constraints. (Langer 2002). However, because state supreme court justices are most often elected, because it is easier for state constitutions to be changed, and because legislators and governors have some control over retention, justices on those courts are much more limited in how they can express their preferences. Studies have shown that the amount of influence exercised by legislators and governors was proportional to the saliency of the issues. When institutional rules, such as method of retention, and political conditions, such as ease in amendment passage, facilitate retaliation, justices are expected to engage in strategic behavior, namely voting against their first preference. This does not mean that these judges are not behaving in a rational manner but rather that the

39

extent to which they are able to achieve their first preferences are based upon institutional constraints.

Despite several studies that have shown that lower courts are not as constrained as the attitudinal model initially might have predicted, it is still widely assumed that the ability of judges to act according to their sincere political beliefs is effectively controlled by the institutional limitations inherent in the hierarchical nature of the judicial system. (See eg. Hettinger, Lindquist & Martinek 2004; Segal & Spaeth 1993 and 2002; Songer, Cameron, and Segal 1994). In particular, scholars have determined that even where there is little to no risk of reversal, lower court judges follow precedent of higher courts in making their decisions. (Songer, Ginn and Sarver 2003)

Constraints to Attitudinal Behavior: Strategic Decision Making

Following the publishing of Segal and Spaeth's work, several scholars of the US Supreme Court attacked the assumption that Supreme Court justices are able to make decisions in an arena devoid of institutional constraints. Research examined the extent to which justices are free to act according to their sincere preferences. After close examination of records concerning the inner workings of the Supreme Court, scholars determined that the attitudinal model did not always explain the behavior of justices. At certain times it appeared that justices would vote against their first preference as a strategy in order to achieve success at a later date. From this research emerged the parameters of the Strategic Model. Justices act strategically when they take positions on issues that are different from their ideal positions out of a desire to get a better result than would have occurred if they held strictly to their convictions. (Maltzman, Spriggs and Wahlbeck 2000). A justice might modify his or her stance on an issue in order to obtain support from a justice who is on the fence. Additionally, the position of the Chief Justice (or the most

40

senior member of the majority when the Chief Justice is in the minority) in determining who drafts the majority opinion allows for strategic behavior in that he is much more likely to give this assignment to a justice who holds the most similar views on the issue.

It is important to note that studies based upon the strategic model still relied upon the basic assumptions of the rational choice model in that they assume that judges will seek to maximize their policy preferences. What is revealed, however, is that even the judges who appear to have the least institutional constraints are limited in the extent that they can behave as a pure rational choice model would predict. In other words, institutions mater, and they matter no matter what level of the judicial hierarchy one presides over (Hall 1992, Epstein and Knight 2000, Hall and Brace 1985).

Constraints on application of the Attitudinal Model: The Influence of Legal and Political Factors on Judicial Decision Making

The influence of legal and political institutions also appears to limit the application of the attitudinal model to the Supreme Court as well as lower courts. Studies have found that precedent as well as political influence from the legislative and executive branches affect judicial decision making (Bailey and Maltzman 2011). All levels of federal courts show increased levels of deference in regards to political questions and the act of state doctrine. during times of national security crises. (Fix and Randazzo) Scholars have been unable, however, to directly link changes in federal judicial behavior to political changes in the executive and legislative branches. (Revesz 2001)

Studies of federal circuit courts have also shown that judges have a number of often conflicting goals: (1) promote policies consistent with their policy preferences; (2) reach decisions that are legally sound; (3)maintain coherence in existing law and (4)limit the time

41

spent deciding any one case. (Klein 2002) The extent to which judges are able to accomplish these goals are constrained by case facts and precedent.

Scholars have also found that federal judges respond to characteristics of the petitioners before them in making their decisions. The Solicitor General enjoys tremendous success in front of the Supreme Court. (See eg. Bailey, Kamoie and Maltzman 2005). Petitioners with greater resources enjoy greater levels of success in federal courts of appeals,(Songer and Sheehan 1992). and even in state supreme courts (Brace and Hall 2001).

Applying the Literature of Judicial Politics to Immigration Judges

In examining the literature surrounding judicial behavior we are left with a more complicated picture than that laid out by scholars of either the legal or attitudinal models. While it appears that the proclivity of judges to act in accordance with their policy preferences extends beyond the level of the Supreme Court to lower federal and state courts, there exist a number of constraints that potentially limit the ability/willingness of judges to sincerely act in accordance with their preferences. Interestingly, these factors do not seem to be constant. It appears that although attitudes matter, they are not the determining factor at all times. In other words, sometimes judges are more free to behave attitudinally than others. Thus, the pertinent question when examining the behavior of judges within any court is to determine what factors limit the judge from behaving sincerely according to his/her preferences, and then determine when or where these factors come into play.

In the study of immigration judge behavior, the complexity of judicial behavior is compounded by the fact that these judges are also bureaucrats. Despite several studies that have shown that lower courts are not as constrained as the attitudinal model initially might have predicted, it is still widely assumed that the ability of judges to act according to their sincere

42

political beliefs is effectively controlled by the institutional limitations inherent in the

hierarchical nature of the judicial system. (See eg. Hettinger, Lindquist & Martinek 2004; Segal

& Spaeth 1993 and 2002; Songer, Cameron, and Segal 1994; Songer, Ginn and Sarver 2003).

Based upon these assumptions the level of the judiciary that would appear to have the least

amount of ability to act attitudinally would be administrative law judges.. Possessing virtually

none of the characteristics that allow the Supreme Court justices to act in accordance with their

policy preferences, ALJs to some extent represent a least likely case study of the attitudinal

model. In particular, the position of immigration judges within the federal bureaucracy would

seem to further limit the ability of these judges to act in accordance with this preferences.

Ramji-Nogales, Schoenholtz, and Philip G. Schrag (2008) applied lessons learned

through the judicial literature to determine that a number of political , economic and social

factors influence relative grant rates of asylum between various immigration courts, the Board of

Immigration Appeals and the courts of appeals. Although they are more concerned with

determining what individual immigration judge characteristics influence likelihood to grant

asylum than characteristics of the countries of origin of the petitioners, the study provides useful

insight into the possibility that factors outside of the facts of the cases potentially play a role in

the asylum decisions. In the years since this study was initially conducted we have seen dramatic

fluctuations in the success rates of asylum applicants from year to year (TRAC 2013).

A number of other studies have examined whether the events of 9/11 have resulted in

lower rates of success for asylum applicants. Schoenholtz (2005) describes a significant decline

in rates of asylum success in two major immigration courts, Houston and Los Angeles. Amnesty

International has also documented a "significant backlash against refugees and asylum seekers

due to their national or ethnic or religious beliefs."[23]

In their most recent study of immigration judge asylum decisions, the Transactional Records Clearinghouse (TRAC) found a significant change in the rates that immigration judges are granting asylum (TRAC 2013). TRAC has been examining the record of every immigration judge who handles at least one hundred asylum claims a year since 1994. Results for 2010 and 2011 revealed a substantial change in rates that immigration judges granted asylum. On average, judges in every court granted asylum at dramatically higher rates in those years than in previous years of the study. The only significant difference that the study revealed was an increase in the success rate of those asylum applicants who were represented by counsel during these years as opposed to previous years under study. The TRAC study does not include any variables related to congressional, executive or judicial changes which might have contributed to this change in immigration judge behavior.

The TRAC study, combined with the other research that has been conducted concerning immigration judge behavior in asylum cases presents an interesting puzzle. If the behavior of these judges can best be explained through the attitudinal model, it is difficult to understand how success rates have fluctuated so often with exogenous factors. Keith, Holmes and Miller (2013) developed a cognitive theory of judicial behavior which helps to address some of these discrepancies. They argue that the policy preferences of immigration judges act as a lens through which a petitioner's application is examined. Some facts, such as the human rights record of the petitioner's home country are viewed objectively. Other facts, such as whether the petitioner is from a country that produces high numbers of fraudulent cases or whether the country has close economic or military ties with the United States, are viewed subjectively. Their work however,

---

[23] http://web.amnesty.org/library/print/ENGIOR51011201.

does not consider possible influence from the executive or legislative forces who have incentives to manipulate the grant or denial of asylum for political reasons. What they fail to address is that immigration judges work within a bureaucratic structure in which a myriad of forces attempt to constrain their exercise of discretion.

Understanding Immigration Judge Behavior through the Lens of Bureaucratic Behavior Scholarship

As employees of the executive branch, immigration judges are bureaucrats. In attempting to understand the behavior of bureaucracies, scholars have most often taken either a top-down approach, focusing on the factors that influence the highest level appointees of an agency, or a bottom-up approach focusing on the behavior of "street level" bureaucrats. (Wilson 1989) The distinction between these approaches closely resembles some of the distinctions that separate scholars of the judiciary. Top down approaches focus on the institutional structures of the bureaucracy in attempting to understand its outputs. This institutionally centric approach in many ways follows similar rationale of the legal model used by many judicial scholars. It assumes that bureaucratic behavior is so sharply constrained by the structure of the institution and the professional norms of the agency that individual choice plays little part in the outputs of the agency.

Bottom-up approaches to the study of bureaucracies center upon the behavior and preferences of the individuals who work within the bureaucracy. Beginning with Lipsky (1980) a number of scholars have examined the behavior of bureaucracies not entirely as a function of the policy preferences of the president, congress or the judiciary but more as a reflection of the policy preferences of the various people who make the day to day street level decisions in a bureaucracy. In this manner they have mirrored approaches to the study of courts by judicial

scholars following the attitudinal model. Building upon the basic assumptions of the attitudinal model, especially as it has been applied to lower courts, bureaucratic scholars have started with the assumption that all actors have policy preferences. From this assumption one builds a model in which bureaucratic discretion provides an opportunity to seek the furtherance of the individual's policy goals as opposed to the goals of the principals. To the extent that institutions are examined in bottom-up studies the focus is on how these institutions limit the ability of street level bureaucrats to act sincerely based upon their own preferences.

Top Down Studies: Principal Agent Relations and Bureaucratic Behavior

At their core, top-down studies rely upon aggregate data to explain the behavior of agencies as a whole. (See eg. Lowi 1979, Niskenan 1971). When the aggregate output of an agency changes, scholars look to see if any political changes occurred around the same time that the agencies actions changed. If there appears to be a temporal connection, scholars hypothesize that the action is in response to the political factor. (See eg. Wood and Waterman 1994)

The principal agent model of bureaucratic behavior is perhaps the most influential area of top-down scholarship. Principal agent models imagine the behavior of individuals within a bureaucracy as being driven by a contractual relationship. The principal in this relationship controls the behavior of its agent through traditional carrot or the stick methods of reward or sanctions. Principals in these models can include institutions such as Congress, the president or the courts or outside factors such as interest groups. The important aspect of the relationship is that principals attempt to control the actions of their bureaucratic agents. (Moe 1982; Wingast and Moran, 1983). When the agent does not perform in concert with the desires of the principal, principal agent models argue that there exists a failure in the reward/sanction apparatus available to the principal. Proponents of this line of research often view the failure of agents to follow the

dictates of their principal as "shirking.". Often it is assumed that agents shirk because the institutions that are supposed to regulate their behavior have failed.

The Role of the Presidency and Congress in Controlling the Actions of Agents

Most early work using the Principal-Agent model found that the presidency, Congress and the Judiciary had little to no influence on the behavior of their ostensible bureaucratic agents. (See eg. Rossiter 1963, Cronin 1980, Noll 1971) However, beginning in the 1980's scholars applied more sophisticated analytical tools to find that principals indeed had some control over their agents. Studies showed that the actions of bureaucracies from the Federal Trade Commission to the National Labor Relations Board were influenced by the Presidency, Congress and Courts. (See eg. Miller and Moe, 1982; Stewart and Cromartie, 1982; Weingast and Moran, 1983).

What is interesting in these principal agent studies is that the relationship between different institutions and the same agent change over time. At some times agencies may be more under the influence of Congress, (See eg. Calvert, McCubbins and Weingast 1989; McCubbins andSchwartz 1984), at others the executive appears to control (Moe, 1982,1985; Wood and Waterman, 1994), and at other times the courts (See eg. Canes-Wrones, 2006; Howard and Nixon, 2002, 2003; Moe, 1985; Snyder and Weingart, 2000). Studies also identified the mechanism through which agents exercised this control, including presidential appointments, budget threats, reorganizations and sanctions from courts. (See eg. Wood 1988; Wood and Waterman 1991)

Hammond and Knott (1996) produced a model of multi-institutional policy-making which shows that there are conditions under which an agency will have considerable autonomy and conditions under which it will have virtually none. As constraints are increased the ability of

bureaucrats to express their policy preferences through their decisions decreases. The authors found that during the times that an agency lacks autonomy, control of the agency usually cannot be attributed to just one institution.

Additional studies have found that the process of nominating and confirming members of the National Labor Relations Board provided both the president and Congress with the ability to influence agency behavior (Snyder and Weingart 2000). This brought about a plethora of scholarly works showing how different institutional principals were able to exercise control over bureaucracies. Shipan (2004) argued that the presidency has the most power to influence the behavior of agencies because presidents are in the position to set an agencies ideal point and thereby establish the policy preferences of the agency.

Influence of the Judiciary in Bureaucratic Decision Making

Studies have also shown that the judiciary has the potential to exercise control over agency behavior. Howard and Nixon (2002) found that the Internal Revenue Service (IRS) modified decisions to audit taxes based upon the ideology of the federal court which had jurisdiction over that particular branch of the IRS. It was shown that as the judicial ideology of an appellate court shifted along a liberal/conservative spectrum, the types of audits conducted changed. IRS offices in areas with liberal courts of appeals would be more likely to focus on the equitable aspects of tax policy by auditing the taxes of more rich filers. In offices that were under the jurisdiction of conservative courts of appeals, IRS agents tended to audit larger numbers of less affluent tax returns while reducing the number brought against wealthier tax filers.

In her 2003 study of the behavior of Army Corps of Engineers, Canes-Wrone (2003) found a similar relationship between judicial philosophy and bureaucratic behavior. She found that the ideology of the lower federal courts influenced the behavior of the corps in relation to

the grant of permits to develop wetlands. Subsequent research into the behavior of the Army Corps of Engineers revealed that Congress has an even greater influence in agency actions than the judiciary. (Canes-Wrone 2006)

Interest Group Influence on the Behavior of Agents

In addition to influence from federal institutions, scholars have examined the extent that interest groups and industries have in influencing bureaucratic behavior. From these approaches scholars have found instances where bureaucracies are essentially captured by the interests it was designed to regulate. (Stigler 1971). More complex interactions have been explained through issue network and advocacy coalition models in which bureaucracies are but one of many players attempting to influence policy. (Sabatier and Pelskey, 1987).

How the Political Environment Affects Principal Agent Relations

The ability and willingness of institutional players such as Congress, the judiciary and the executive branch to limit the discretion of bureaucratic agents appears to fluctuate depending upon the political environment. Scholz, Twombly and Headrick (1992) found that local politicians and their electoral coalitions have the power to influence the behavior of field offices within their electoral districts. Shipan (2004) found that the extent of Congressional control over bureaucracies in large parts depends upon the political environment of Congress. The relationship between the ideology of an agency and the ideology of the oversight committee or even Congress as a whole influences the extent that the agency behaves autonomously. When agencies and Congress share ideology, agencies tend to behave more autonomously. When agency ideology is opposite from the committee, the agency adheres more to the preferences of the principal.

Similarly, Taratoot and Nixon (2011), examine how divided government influences the

extent of discretion granted to bureaucracies. In those situations when legislation guiding agency action is passed under a divided government, that legislation contains more restrictions on agency discretion.

Top Down Approaches to the Study of Immigration Judge Behavior

Salehyan and Rosenblum (2004), applied a traditional top-down approach to the examination of immigration judge behavior in asylum cases. Starting from the assumption that principals in the executive and legislative branches would like to be able to use the grant or denial of asylum for political gain, they examined whether petitioners from countries with close ties to the United States were denied asylum a greater rate than petitioners from countries that were ideological opponents. After examining factors such as economic ties, military support, ideological differences, domestic policy and human rights records the authors debunked the belief that the end of the Cold War signaled a shift in the nature of asylum policy in the United States. They found that US interests play at least as significant a role in asylum grant rates as normative/human rights concerns.

In a follow up article to their 2004 article, Salehyan and Rosenblum examined the impact of domestic politics on immigration judge behavior (Salehyan and Rosenblum 2008). They found that media and congressional attention to asylum issues has a range of effects on judicial behavior depending upon the type of attention. When the media focused on asylum issues, asylum judges pay more attention to the humanitarian records of the applicants home country when making decisions as opposed to the policy goals of the executive. Congressional attention on the issue of asylum has two possible effects. If the attention is focused on enforcement, immigration judges focus more on the policy goals of the executive. When Congressional

attention is focused on humanitarian issues then the human rights record of the petitioner's country of origin plays a greater role.

Both of these articles examined the behavior of immigration judges based upon top-down notions of bureaucratic behavior. Neither approach examined the characteristics of the individual judges making these decisions. Rather they focused on the goals of the principals, be they the executive or the legislature, and the effects that these goals have on the behavior of these judges. Neither of these studies adequately explain how the policy goals of the principals are conveyed to the immigration judges. This reveals one of the primary weaknesses of the top-down approach.

Problems with Applying the Top Down Approach to the Study of Immigration Judge Behavior

One of the primary criticisms of the top-down approach to the study of bureaucracies lies in its assumption of uniformity. Whereas the Principal Agent model makes assumptions regarding the behavior of the agent bureaucracy as if it speaks and acts with one voice, in fact it is an aggregate of thousands of people each making individual choices. Top down studies are often based upon the erroneous assumption that street level bureaucrats can adequately be controlled by the heads of these bureaucracies when in fact evidence points to a more complicated relationship. Although scholars such as Kingdon (1985) have found that presidential appointees have a substantial influence on the actions and agendas of agencies, scholars such as Heclo (1977) and Kaufman (1981) have determined that political level appointees have very little ability to influence the behavior of bureaucrats.

How one measures the attitudes of lower level bureaucrats might prove to be the explanation for this apparent contradiction. Previous studies have relied upon the ideology of the president as a proxy for determining the ideology of appointees. (See eg. Bailey 2007; Epstein et

51

al., 2007; McCarty and Poole, 1995). However since the vast number of bureaucrats in any agency are not appointed, this approach often provides little insight into the attitudes associated with these street level employees. The difficulty in determining the policy preferences of bureaucratic officials and their agencies was addressed by Clinton, et al. (2012). They developed a method for measuring agency ideology that yields ideal point estimates of individual bureaucrats and agencies that are comparable with those of other political actors. By doing so they were able to examine how the culture of a bureaucracy influences the decisions it makes as well as its susceptibility to exogenous influence from other institutions. Clinton et al. administered a survey to 7,448 federal executives asking their preferences on key votes in front of Congress. From these surveys, the Clinton et al. were able to make determinations as to the ideology of the various street level bureaucrats they surveyed. Using these scores they then tested

Rather than examining the behavior of an agency as purely a reflection of the ideology of the president who appointed the upper echelon of the bureaucracy, this method allows for an understanding of the behavior of individual bureaucrats charged with making specific decisions. It is in keeping with the general approach towards understanding bureaucratic behavior based upon the study of "street level" bureaucrats.

Bottom Up Studies: Street Level Bureaucrats and Discretion

In his seminal work on the subject of street-level bureaucrats, Lipsky(1980) argued that "public policy is not best understood as made in legislatures or top floor suites of high-ranking administrators, because in important ways it is actually made in the crowded offices and daily encounters of street-level workers." (Lipsky 1980, p.xi)

Rather than focusing on policies and laws designed to control these lower level bureaucrats,

Lipsky examined how the coping mechanisms they developed as well as their own goals controlled policy. He discovered that in engaging with the public, street-level bureaucrats behave in ways that are unsanctioned and which often contradict the policies of the higher ups in the agency.

Maynard-Moody and Musheno (2000) elaborated upon these conclusions of Lipsky stating that "every aspect of street-level work is defined by rules and procedures ... yet rules and procedures provide only weak constraints on the loose parameters around street-level judgments. Street-level work is, ironically, rule saturated, not rule bound" (p. 334). Seminal to the work of street level bureaucrats is the decision of what rules apply in each particular situation. When agencies have high numbers of rules and where those rules are contradictory, discretion naturally arises as workers at the street level must determine which rules to apply. If politicians or higher ups in the agency attempt to circumscribe this discretion through new or more rules, discretion does not disappear; it is merely shifted to a new area. (Riccucci 2005)

Subsequent scholars have examined a number of factors that influence the level of discretion exhibited by street level bureaucrats. These studies suggest three basic categories of factors which play a role in how street level bureaucrats exercise discretion: (1) the characteristics of the organization; (2) the characteristics of the street level bureaucrat; and (3) the personal characteristics of the client. (Hasenfeld and English (1974) .

How Agency Characteristics Influence Street-Level Exercise of Discretion

Studies have shown that organizational characteristics have the potential to limit or modify the discretionary behavior of street level bureaucrats. Where the routines of an organization are less flexible decisions of street level, bureaucrats tend to be tightly circumscribed. (Peyrot, 1982). Similarly, high levels of formalization in the organization of an

53

agency can result in limits to the exercise of discretion. (Aiken and Hage, 1966). Additionally, scholars such as Kelly (1994) have argued that the values emphasized throughout an agency's culture can influence the level and type of discretion exercised by street-level bureaucrats.

In those situations where street level bureaucrats are faced with resource shortages and high caseloads they may decide to ignore proper procedures and exercise personal discretion as a coping mechanism. (Prottas, 1979). Rather than relying purely upon their professional judgment in making decisions, street level bureaucrats often respond to the pressure and lack of resources in their work place by routinizing their responses. (Taylor and Kelly, 2006).

How Personal Characteristics of Bureaucrats Influence the Type and Level of Discretion they Exercise

A number of studies have revealed that the personal characteristics of bureaucrats influence how they exercise their discretion. In particular, the exercise of discretion is often directly related to how the bureaucrats view themselves. (Crozier, 1964; Kaufman, 1960; Maynard, Moody and Mushero, 2003). Bureaucrats who identify themselves as sympathetic tend to provide more benefits than those who self-identify as rule-oriented (Kroeger 1975). Those bureaucrats who identify as being professionally oriented are more likely to follow agency procedures as opposed to exercising discretion in handing out benefits. (Miller, 1967). Other studies have shown that street level bureaucrats will use discretion in order to benefit those whom they identify with. (Wilson and Keiser 2010)

Research has also shown that how bureaucrats identify with such subjective concepts such as justice also influence their exercise of discretion. Kelly (1994) examined how the frameworks through which workers evaluate the world shape their willingness to comply with agency policy. According to Kelly, street level bureaucrats "orchestrate outcomes that are compatible with their visions of justice." (Kelly 1994, 119)

How Personal Characteristics of Clients Influence the Exercise of Discretion

Evidence also points to a connection between the personal characteristics of different clients and the discretionary behavior of street level bureaucrats. Some of these are relatively innocuous such as the tendency to grant greater benefits to those clients who appear to have the greatest level of need. (Goodsell 1980). Other are more problematic, such as decisions to grant fewer benefits to clients who are considered to be particularly difficult or troublesome. (Weaver, Hasenfeld and Steinmetz, 1997). Additionally, clients who are viewed as more articulate are provided benefits at a greater rate than those who are not.

Even more troubling is the findings of studies which show that decisions to grant or deny benefits are based upon pre-conceived notions of the moral character of the clients. Those who are considered to be amongst the population of "abusers of the system" are treated differently than those who are "truly in need." (Maynard-Moody and Mushego 2003) Schram, Soss, Fording, and Houser (2009), found evidence that clients with similar histories of rules infractions are treated differently based upon their race. White rule breakers were less likely to be punished for previous transgressions than African-American or Latina rule breakers.

Immigration Courts as Street Level Bureaucrats

Examining the behavior of immigration judges using models developed to understand the behavior of street level bureaucrats might at first appear to be a bit of a stretch. The list of bureaucratic positions that are considered to be street level usually includes social workers, teachers and police officers rather than federal judges. In most cases the types of tasks undertaken by federal judges would make them poor choices for models associated with workers who have direct contact with the beneficiaries of governmental services. However, the huge

numbers of cases handled by immigration judges, the often conflicting pressures placed upon them and the relative inability of supervisors to monitor their application of discretion make immigration judges in many ways similar to street level workers.

No extant studies have applied street level bureaucratic models to the study of asylum decisions by immigration judges. However, I believe that any study of these decisions must examine the same types of forces that impact the operation of discretion at the lowest levels of bureaucracies.

Examining the Behavior of Immigration Judges Through the Lens of Administrative Court Models

In her article "Refugee Roulette in an Administrative Law Context: the Déjà vu of Decisional Disparities in Agency Adjudication," Taylor (2007) argued that the study of immigration judge behavior was deficient in that it had not included lessons learned through the study of administrative courts. Taylor argued that previous studies which attempted to examine immigration courts as either bureaucracies or courts failed to adequately consider the unique situation faced by actors within an administrative court. Because, in most cases ALJs are employees of the same agencies whose caseloads they adjudicate, it is impossible to examine them in the same way as Article III courts. However attempts to examine the behavior of ALJs in the same manner as one examines the behavior of bureaucrats ignores the fact that they are supposed to be impartial adjudicators.

Given the nature of ALJs positions within the federal bureaucracy, their ability to act impartially has often been questioned. The institutional and political constraints layered over ALJs make would make it seem that they would have less independence than other judges. However, despite these constraints it appears that ALJs have a great deal of freedom to act in

accordance with their preferences. Unlike other civil servants, ALJs are not beholden to "agency efficiency rating, promotions, or demotions or pay cuts." (Ruhlen, 1982; Taratoot and Howard, 2011) It is also difficult to fire ALJs, requiring a lengthy hearing. (Taratoot and Howard, 2008). The inability of agency higher ups to attempt to influence ALJ behavior through threats of decreasing pay or termination of employment, provide a level of insulation for the ALJs beyond what one would expect.

How ALJs exercise their discretion within the space afforded them by their unique position has been an area of interest for decades. Studies throughout the years have consistently revealed significant disparities between ALJ decisions. (Gifford, 1991; Wertkin, 2002; Lubbers, 1996). Much of the research conducted concerning these disparities has focused on attempts to bring consistency to ALJ decisions. What little quantitative research that has been conducted on these courts has generally centered around two different approaches to modeling their behavior. One is the use of theories developed through the study of bureaucracies which focus on principal agent and other institutionally based models. (See eg. Hudson et al., 2003) The other examines ALJ decisions using models formed through the study of judiciaries in particular application of attitudinal and strategic models. (See eg. Taylor 2009)

The results of both sets of approaches have been remarkably consistent in finding that despite the large numbers of institutional constraints imposed both through bureaucratic channels, as well as judicial supervision, judges presiding over similar cases reach different decisions. (See eg. Green, 1966; Segal, Timpone & Howard, 2000). Studies have repeatedly shown that the policy preferences of administrative law judges influence their decisions despite the institutional structures set in place to limit their discretion. What is even more interesting is that this variance, while being linked to the policy preferences of the judges, also seems to

fluctuate over time (See eg. Meier and Bohte, 2007). Thus it appears that attitudes seem to matter but they matter more so at some times than others. Unfortunately, studies of the behavior of administrative judges rarely go beyond the first step of determining that individual characteristics of judges influence their decisions. We are shown evidence that judges appointed by liberals behave differently than judges appointed by conservatives in the aggregate, but such studies rarely attempt to explain the time periods when attitudes alone do not adequately predict decisions (Taratoot and Howard, 2011).

Taratoot and Howard (2011) expand upon the relatively simple models based upon attitudinal approaches to develop a multifaceted approach to the study of administrative law courts. Through an analysis of Administrative Law Judge decisions as they relate to the National Labor Relations Board, Taratoot and Howard find that policy preferences, while playing a large role in determining decisions, do not explain everything. They examine the behavior of ALJs as being somewhat akin to that of Federal District Judges who, because of their place in the bureaucracy , also face additional political constraints that do not generally control judicial behavior. According to their research, the unique position of ALJ's as quasi-judicial bodies within a bureaucratic structure both allow for a large amount of attitudinally based discretion but also temper the exercise of that discretion based upon a range of legislative, executive and judicial factors. In addition, they found that exogenous factors such as unemployment rates and public opinions towards unions also play significant roles in the behavior of these judges. A number of subsequent works have applied variations of this model to explain how lower level bureaucrats can influence the behavior of agency higher ups as well as appellate judges. (Taratoot 2013; Taratoot 2014)

Conclusion: Lessons Learned from Judicial, Bureaucratic and Administrative Law Court Literature

The above discussion of the literature concerning the behavior of judges, bureaucrats and ALJs reviews a number of commonalities. Despite differences in institutional arrangements, layers of supervision and amounts of discretion, the judges and bureaucrats behave in similar ways. In essence they behave rationally. Study after study has challenged the notion that professional or legal norms will completely constrain behavior of individuals in any context. Judges even those whose actions are supposed to be monitored and controlled by higher courts, make decisions based upon their policy preferences rather than impartially following the law. Bureaucrats, even in the most highly regulated and monitored agencies exercise discretion in ways consistent with their preferences rather than following established agency procedures.

The story of judicial and bureaucratic behavior does not end with the realization that these actors are seeking to maximize the achievement of their desired goals. History has shown that political and social forces influence the behavior of judges and bureaucrats. The legislature and executive respond to what they see as abuses by judges and bureaucrats with attempts to limit the amount of discretion afforded to them. Sometimes these attempts to limit discretion work, other times they do not. Historical events give rise to political and social forces that sometimes change the way that judges and bureaucrats exercise their discretion.

Few studies have attempted to combine models based on personal preference with those based upon exogenous constraints. To the extent this has been accomplished, it has not been applied to the study of immigration courts. By examining the behavior of immigration judges in adjudicating asylum claims through a model which embodies lessons learned from previous research on the judiciary, bureaucracy and administrative law courts, I hope to be able to identify and quantify the factors which influence their behavior. This research also has the potential to

provide greater insight into the behavior of lower level judges, ALJs and bureaucrats whose decisions are potentially subject to oversight from many sources, but whose everyday activity largely goes unnoticed.

Chapter four builds upon this literature review in setting forth the theoretical underpinnings of this research.

CHAPTER IV -THEORIES AND APPROACHES

This chapter sets out the general theoretical propositions of my dissertation. The following empirical chapters 6, 7, 8 and 9 will set out the specific hypotheses for the ideas I intend to test. While the models developed for this dissertation borrow from a number of sub-fields of political science, all are based upon the application of rational choice theory to explain the behavior of individuals within an institutional context. This research first examines success rates for asylum applicants in immigration courts for the past 15 years. It is based upon an understanding of human behavior that is informed by rational choice models. Central to this understanding is the assumption that absent constraints individuals will make decisions based upon what will most likely produce the greatest level of utility for them. Rational choice theory entered into the political science world through the seminal works of Mancur Olson and Anthony Downs.

Olson (1965) looked at the fundamental problem of explaining why people seldom work collectively towards public goals. He explained that large groups often do not have as much influence as small groups largely because of their inability to overcome the collective action problem. Applying theories from economics, he showed that in the absence of positive or negative incentives, people would not expend resources to achieve a common goal.

Downs (1957) argued that one can predict the actions that a person will take by calculating the most reasonable way for the decision maker to reach his goals and then assume the decision maker is rational. His basic assumption is that one must reduce the ends of the decision maker to a single goal. A number of basic assumptions form the heart of rational choice theory. They include: (1) The individual is the level of analysis; (2) he/she is chiefly concerned

with maximization of utility; (3) one can rank ones options; and (4) rational choice models can "apply equally to all persons under study – that decisions, rules, and tastes are stable over time and similar among people" (Downs 1957).

The Use of Rational Choice Models in the Study of Judges and Bureaucrats

The use of rational choice models have spread to a number of political sub-fields. Bureaucratic models of behavior such as that presented by Downs (1966) argue that in essence bureaucracies are systems designed to channel as well as control rational choices of their members. Downs presents a theory of rational choice in the context of the institutional constraints of a bureaucracy similar to that faced by ALJs (Downs 1966). Downs argued that bureaucratic officials, like all other social agents, seek to obtain their goals rationally. By rationally he meant that bureaucrats will respond to costs, obtaining more of their goal when costs are low and less when costs are high. Downs argued that while bureaucratic officials have complex arrays of goals, they will always be significantly motivated by their own self interest. Every organization is influenced by the function it serves within society as a whole as well as the expectations placed upon it both internally and externally.

Much of the bottom-up approach to the study of bureaucracies relies upon rational choice approaches. (See e.g. Maynard-Moody and Mushego 2003; Soss, Fording, and Houser 2009). These studies start from the premise that agents have their own objectives and that these objectives influence the decisions that they make. Studies have shown that street level bureaucrats take actions that violate established policy for any number of self serving reasons. Street level bureaucrats provide more assistance to clients who are considered easier to deal with (See e.g. Hasenfeld and Steinmetz 1981). They also make decisions in keeping with their policy goals (See e.g. Goodsell 1980)

Attitudinal Approaches to the study of judges also are also based upon models of rational choice. Segal and Spaeth (1993) examined an institution that has very few constraints, the US Supreme Court, and found that amongst a certain subsection of their cases (the most politically salient) Supreme Court decisions were almost entirely based upon the political preference of the justices. It was assumed that other institutions that have more constraints would be less able to purely express these preferences. As discussed above, this proved to be only partly accurate. In subsequent studies of lower courts it was determined that a number of constraints, namely fear of reversal and desire for higher office did not play as huge a role as Segal and Spaeth envisioned in lower judicial institutions (See e.g. Rohde and Spaeth 1976, Hall 1992, Brace and Hall 2001).

Institutional Constraints Still Matter

Many critics of rational choice point out that pure rational choice situations rarely occur in the real world. They argue that in every-day life people are rarely able to do exactly what maximizes their utility. Rules govern individual behavior which in turn alters the calculus of rational decision makers. However, such arguments are most often just straw men set up by those who do not understand how rational choice models work.

Rational choice scholars have long recognized that institutional constraints limit the extent to which individual actors are able to pursue their goals. North (1990) argues that the major role of institutions in society is to reduce uncertainty by establishing a stable structure to human interaction. North emphasizes the role of institutions together with economic constraints determining the opportunities for people within society. Institutions change through the lock-in that comes from the symbiotic relationship between institutions and the organizations that have evolved as a consequence of the incentive structure provided by the institutions. Incremental change comes from organizational entrepreneurs who perceive that hey have stuff to gain from

63

altering the institution. North's approach takes into consideration both the role of institutions in setting the parameters for rational action as well as the role of history in shaping how the institutions change (North 1990).

Studies of the Supreme Court which followed Segal and Spaeth examined how the institutions of the court constrained the ability of justices to sincerely express their preferences. The strategic model is a recognition that actors in every institution must conform their decisions to certain institutional constraints. In the case of the Supreme Court the rules regarding the granting of certiorari and authorship of majority decisions often lead to votes that appear to go against the preferences of the judges making them. Only when one knows the rules of the institution does one realize that judges are seeking to maximize long term utility even when they make decisions that appear to go against their short term interests.

A Neo-Institutionalist Approach to Understanding Judicial Behavior

My research on the behavior of Immigration Judge's in their decisions to grant or asylum is cognizant of both the goals of the judges as well as the institutional constraints placed upon them. Authors such as Elinor Ostrom would refer to this approach as rational choice institutionalism, while others might label it as Neo-institutionalism (Ostrom, 1992). Neo-institutionalism asserts that "political outcomes . . . result from actors' seeking to realize their goals, choosing within and possibly shaping a given set of institutional arrangements, and so choosing within a given historical context" (Aldrich 1995, 6; citing Rohde and Shepsle 1978). What it centers on is an understanding that institutions matter insofar as they provide incentives and constraints to utility maximizing individuals. Thus in order to understand the behavior of immigration judges, one starts from the assumption that each judge wants to make decisions that coincide with his/her policy preferences. From this basis one then examines which rules or

64

exogenous conditions make it difficult to express these preferences. The key to understanding

these decisions is to determine what these rules are and whether they actually modify behavior.

My investigation of these constraints is based upon an institutional approach similar to that used

by scholars of state supreme courts (See e.g. Brace & Hall 1997).

This research is also cognizant of the fact that immigration courts exist within the context

of society as a whole. Just as studies have shown that the Supreme Court is more deferential to

the executive branch during times of war (See eg. Epstein et al. 2005) and more likely to side

with the solicitor general (see eg. Bailey et al. 2005), there is a real possibility that exogenous

events and circumstances can play a role in immigration judge's decisions to grant or deny

asylum.

In particular this research builds upon the multi-institutional model of bureaucratic

behavior formulated by Hammond and Knott (1996). It also relies upon the work of Taratoot and

Howard (2011) who examine a number of judicial, executive, legislative and historical events in

modeling the behavior of Administrative Law Judges. Both of these works recognize that

modeling the behavior of these types of bureaucrats is much more complicated than traditional

bureaucratic or judicial models would suggest. However, rather than ending with the conclusion

that sometimes these actors feel free to act in accordance with their attitudes and sometimes they

bow to the demands of the principal, both sets of authors take the next step and explain under

which combination of factors these different models of behavior apply. Building from the

assumption that, absent constraints, ALJs will act as other judges do, namely in an attitudinal

manner, one can then examine which series of variables most successfully constrains this

behavior. In addition, one can also examine the extent to which exogenous factors also play a

part in influencing the exercise of attitudinally based discretion. It is my belief that it is only

through an examination of several institutions as well as historical and political factors that one can adequately understand how Immigration Judges make decisions on asylum issues. The multi-institutional model that I have developed will enable me to test a number of hypotheses, several of which have never been tested in this context before.

In addition to helping to explain the behavior of immigration judges, this research has the potential to provide insight into the behavior of a wide range of judges and bureaucrats. Since immigration judges in particular, and ALJs in general, combine characteristics of both judicial and bureaucratic actors, this study has the potential to further understanding of how rational actors behave in environments of varying levels of institutional and societal constraint.

CHAPTER V - RESEARCH DESIGN

This chapter lays out the variables, data sources and models that will be tested in this dissertation. The following empirical chapters 6, 7, 8 and 9 will set out the specific hypotheses for the ideas I intend to test

Data and Methods

The scope of the research in this study includes final decisions reached by immigration judges in asylum claims from 1997-2013 for applicants for Asylum. There are a number of reasons that I have chosen to concentrate on this time period. The years include applicants who brought their claims under three different presidential regimes. Additionally, the data set includes cases brought before and after the events of 9/11 as well as the significant changes to the asylum process that followed. The decisions of immigration judges, as well as the country of origin of the petitioner, date of decision and court location were gleaned from a FOIA request and include over 235,000 petitions from 1997 to 2013.

Several potential difficulties arise from the time period involved in this research. Similar studies have avoided attempting to model the behavior of immigration judges in time periods that include both pre and post 9/11. Dramatic changes following 9/11 changed the scope of judicial discretion and might have more of an influence on subsequent changes in judicial behavior than the terrorist acts themselves. It will be important to vary the model in order to attempt to ascertain whether changes to grant rates are the result of bureaucratic rules changes or changing world conditions. Other potential problems arise from the inability to examine all of the circumstances surrounding each petition. Because of privacy concerns, only a small number of people are able to access the particulars of asylum claims. Thus, I will be forced to used proxies

in order to attempt to differentiate between the relative strengths of asylum cases. Some of these proxies such as human rights records of petitioner's countries of origin should not be problematic. Others, such as whether the petitioner hails from a country that produces large numbers of fraudulent cases will be more so.

Control Variables

I have included a number of control variables which are present in every model tested in this dissertation. These variables largely measure factors that are not linked with any of the hypotheses that I intend to examine, but which have shown in previous studies to influence the grant of asylum. These control variables can be broken down into those that measure individual characteristics of an asylum petitioner and those that represent general factors that apply to all petitioners during the year in which the petition was filed.

Individual Control Variables

Since the grant or denial of asylum is largely based upon how a petitioner's country of origin respects human rights, it is it is important to have a measure to represent the strength of a petitioner's claim. Information regarding potential changes in the human rights record in petitioner's countries of origin over the time period of this study has been taken from the Political Terror Scale. (Gibney, Mark, Cornett, Wood, Haschke, and Arnon, 2015)

Due to the extended time periods that asylum claims often take, many people who face deportation often file weak or fraudulent asylum claims in order to stall deportation. It is assumed that petitioners who file claims after deportation proceedings have commenced would have less of a chance to obtain a favorable asylum result. To capture whether the petition was filed after deportation proceedings began, I have included a dummy variable to indicate whether

the application for asylum was defensive.[24].

Success in asylum cases is often predicated on having adequate representation. For this reason I have also included a dichotomous variable that records whether the petitioner was represented by counsel.

A number of previous studies have shown that female judges are more likely to grant asylum than male judges. As such I have coded Gender as a dummy variable.

In order to capture the effect of large numbers of economic immigrants from Mexico, Central and South America, I have included a variable which records whether the immigration court is located in a state with a southern border.

Some countries produce a large number of fraudulent asylum cases. This is largely because these countries also produce a large number of people coming to the United States for economic opportunity rather than fleeing persecution. In order to capture this characteristic I have included a dummy variable which measures whether the petitioner is from a country that is in the top ten of fraudulent petitions for a particular year.

General Control Variables

Opinions on immigration as well as immigration flows into the country are affected by the economy. When the US economy is doing well, a larger percentage of immigration is based upon economic needs rather than efforts to escape persecution. As a measure of the strength of the US economy I have included unemployment rate as a variable. The belief is that as the unemployment rate goes up, the more likely it is that the US economy is not doing well and the less likely that an applicant is making a fraudulent asylum case.

The effect of the events of 9/11 caused a massive shift in the way that our country as a

---

[24] Defensive applications generally coincide with efforts to remain in the United States at any cost and are thus more often fraudulent.

whole has looked at immigration issues. In order to capture this effect I have included a dummy variable which divides the data into pre and post 9/11 periods.

Operant Variables

The variables that I use to test my hypotheses have been drawn from a number of sources. Several have been used in studies which examine the behavior of immigration judges in particular while others were drawn from general studies of bureaucracies and courts. Due to the fact that the grant of asylum has historically served both human rights as well as political purposes, I have grouped the operant variables as either human rights variables or political variables.

Human Rights Variable

Perhaps the most important variable that I rely on in this dissertation is a measure of judicial ideology. In coding judicial ideology I relied upon the scoring system developed by Keith Holmes & Miller, 2013 & 2014. This scoring system examines the background of immigration judges before they came to the bench. Judges who had certain types of backgrounds, working for the INS, are scored as being more likely to be conservative. Judges who worked for more pro-applicant causes are scored as more likely to be liberal. Each judge is then assigned group based upon their ideology score in a categorical variable.

Political Variables

In order to test the influence of Congressional committees on Immigration Judge behavior I measured Congressional influence by including the Poole and Rosenthal (1991) common space score of the median member of the relevant committees in the House and the Senate at the times that the immigration judge's decision was rendered.

In order to measure the ideology of the circuit courts to which asylum decisions are appealed, I followed the approach of Taratoot and Howard (2011) and use the Giles, Hettinger, and Pepper (GHP) scores (2001, 2002) in order to calculate the median nominate score. The ideology scores of each member of a circuit were examined, the median score determined and then used as a proxy for the ideology of the circuit. I obtained these court scores from work conducted by Keele (2014).

In order to measure the ideology of each immigration court I took the mean ideology of the other judges making asylum decisions in that court for the year of the decisions.

Following the approach favored by Salehyan and Rosenblum (2008) and Howell and Pevehouse (2005) I examined the role of presidential ideology on immigration judge behavior. Although Taratoot and Howard did not include presidential ideology as one of their variables, Saleyhan and Rosenblum's findings reveal that it potentially plays a factor. I have followed Taratoot and Howard's (2011) approach and used Poole and Rosenthal (1991) common space scores for the three presidents who were in office during the course of the study, Clinton, Bush and Obama.

In order to examine the level of Congressional attention being given to immigration enforcement and humanitarian migration I have followed Salehyan and Rosenblum's (2008) method of counting Congressional hearings on each of these issues. A Boolean keyword search of the Lexis-Nexis Congressional Database for congressional hearings on (1) "immigration" and "refugee" or "asylum" and (2) "immigration" and "illegal" or "undocumented" were used[25]. These hearings were separated into two groups. The first contains those hearings in which human rights factors related to asylum are discussed. The second group will include those hearings in

---

[25] Saleyhan and Rosenblum argue that such searches will distinguish between refugee/asylum hearings and immigration enforcement hearings.

which immigration enforcement issues are discussed.

In order to model media interest in the issue I again followed Salehyan and Rosenblum's (2008) approach of conducting electronic keyword searches of the New York Times Index for any references to "immigration" or "refugees" for each year. Raw counts were divided by the total number of stories indexed per year to calculate the percentage of media attention towards immigration.

I tested Saleyhan and Rosenblum's (2008) findings that there are interaction affects related to the types of Congressional and media attention being applied and the role of other factors that may influence an immigration judges decision. Saleyhan and Rosenblum have presented findings which indicate that congressional and media attention to different aspects of immigration issues has effects on whether immigration judges are likely to follow human rights concerns in relation to asylum decisions or whether they are likely to pay more attention to political concerns. They argue that when attention is drawn towards enforcement issues, immigration judges will be more influenced by the political ties of the petitioner's country of origin to the United States than they will the actual humanitarian conditions within the country of origin. During those time periods where attention is drawn towards the humanitarian side of the immigration, immigration judges are more likely to give more weight to the human rights records within a petitioner's country of origin.

I have examined the role of public opinion through an examination of media attention as measured by searches of asylum and immigration articles in the New York Times data base with a simple count being used as a proxy for level of interest.. This approach is in keeping with that used by Taratoot and Howard (2012).

In modeling the role of changes to asylum law over this time period I will include dummy

variables which follow changes to the level of discretion of immigration judges as well as administrative changes as they relate to the Board of Immigration Appeals. These will include such changes as those brought through the Real ID Act and the removal of the requirement that the Board of Immigration Appeals submit a written decision in appeals. I have also included dummy variables concerning actions taken by Attorney Generals Ashcroft and Gonzalez which changed the nature of immigration proceedings.

In order to test whether economic ties to the United States influenced chances to obtain asylum I included a variable that measured the total trade between the petitioner's country of origin and the United States. In order to measure whether close military ties between the petitioner's country of origin and the United States affected chances of gaining asylum I included a dummy variable which indicated whether the country received military aid from the United States. In order to test whether there were continuing effects from the Cold War, I included a dummy variable which measured whether the petitioner is from a former or current communist state was also coded.

Models

In order to test these hypotheses I developed a series of models. By examining the effects that several different variables have on asylum grant rates I was able to test several models of bureaucratic and judicial behavior and compare each to my multi-institutional model. Up until this point, research on immigration judge behavior has failed to adequately consider the range of variables that potentially influence their behavior. In approaching immigration judges purely through judicial models, previous scholars have failed to examine how their place within the structure of a bureaucracy constrains their exercise of discretion. Studies that examined immigration judges as cogs within a bureaucracy, failed to recognize the influence played by

their personal preferences in their decisions. By adapting models designed to explain the behavior of administrative law judges to the unique characteristics of immigration judges, I hope to fill in the gaps of previous research.

Since each of the cases I examined ended in either a grant or denial of asylum, I used a MLE Logit model. Logit models are appropriate for these types models where the dependent variable is dichotomous. Decisions by immigration judges are either to grant or deny and will be expressed through a dichotomous variable of 0 or 1.

In Chapter Six, I examine my data through three separate models. The first model I tested applies theories developed in judicial attitudinal studies. Outside the control variables it focuses on how the ideology of the immigration judges influenced their decisions. The second model applies theories developed through top down bureaucratic studies. It includes the Congressional and Executive ideology variables, Congressional hearings variables as well as variables related to connections between the petitioner's home country and the United States. These include trade, military aid and whether the country was or had been a communist state. The third model is a multi-institutional model which includes the variables present in the first two models as well as variables concerning case load, mean court ideology and a public opinion variable. I then compare the results from each model in order to determine whether the multi-institutional model better explains the behavior of immigration judges in asylum decisions.

In Chapter seven I apply the multi-institutional model set forth in chapter Six to examine whether variables related to Congressional and public attention to areas related to asylum and or other immigration related matters influence which factors immigration courts rely on in making their decisions on asylum cases. I am interested in determining whether the hypotheses developed by Salehyan and Rosenblum (2008), in their top-down study of immigration court

74

decisions hold up when variables relating to attitudinal and bottom-up theories are present. I am

also interested in testing a number of other interaction effects on the probability of obtaining

asylum success.

The first model I test in chapter seven examines whether the interaction between

variables measuring the number of human rights hearings and the effect of human rights record

of petitioner's home country significantly impacts a petitioner's probability of asylum success..

The second tests whether the interaction of the variable which measures Congressional attention

to immigration enforcement related issues with a variable which measured whether a petitioner is

from a country that receives military aid has a significant effect on a petitioner's probability of

obtaining asylum. The third model examines whether the interaction between the variable that

measures Congressional attention to immigration enforcement related issues with a variable

which measured whether a petitioner is from a current or former communist country significantly

affects a petitioner's probability of obtaining asylum. The fourth model examines whether the

interaction of the variable that measures Congressional attention to immigration enforcement

related issues with a variable which measured the extent of trade with the United States

significantly changes a petitioner's chance of obtaining asylum. The fifth model examines

whether the interaction of the variable which measures Congressional attention to immigration

enforcement related issues is integrated with a variable which measures whether a petitioner is

from a country that produces a large number of fraudulent asylum claims affects probability of

asylum success. The sixth model examines whether interaction of the variable which measures

public attention towards asylum related with the variable that measures the political terror score

of a petitioner's country of origin is significant.

In chapter eight I again apply the multi-institutional model to examine whether the events

of 9/11 resulted in immigration judges placing more emphasis on certain variables in making their asylum decisions. In order to determine this, I interact the variable that measures whether a petitioner's claim was brought before or after 9/11 with variables that measure the human rights record of the petitioner's country of origin, the political ideology of the petitioner's country of origin, the level of trade between the United States and the petitioner's country of origin, whether the petitioner's country of origin receives military aid from the United States and whether the petitioner's country of origin produces large numbers of fraudulent asylum claims.

In chapter nine I examine variations on the multi-institutional model in order to determine whether immigration judges with liberal, moderate or conservative ideologies are affected by variables differently. The variations to the multi-institutional model examined in this chapter all replace the judicial ideology score with a variable which places judges into one of three groups based upon their ideology scores. By separating judges into one of three categories I am able to determine whether judges react to certain variables based upon their ideology. Through an examination of various interaction effects I am able to develop answers to a number of questions. When judges have high case loads are they more likely to grant asylum if they are liberal and less likely if they are conservative? Do all types of judges respond the same way when Congressional ideology shifts? Are all types of judges affected similarly in response to the ideology of other members of their court? Do different types of judges rely on different factors in making their decisions, i.e., are liberal judges more likely to rely on human rights factors and conservative judges more likely to look at political factors.

CHAPTER VI - A COMPARISON OF MODELS OF IMMIGRATION JUDGE BEHAVIOR IN ASYLUM CASES

As of yet no study has attempted to examine the behavior of immigration judges through an approach that includes theories developed in judicial, top-down and bottom-up bureaucratic studies. In this chapter I compare the results produced by two models that have previous been applied to asylum decisions by immigration judges to my multi-institutional model. In order to examine whether this multi-institutional approach provides a better understanding of immigration judge behavior I apply each of the models to the same data set. The first model that I intend to compare examines the data through the variables commonly used in attitudinally based judicial models, chiefly focusing on the impact of judicial ideology on likelihood of success. The second looks at a traditional top-down bureaucratic approach which focuses on variables associated with the various institutions that supervise the decision maker. The third model, is my multi-institutional model which combines variables used in the first two with ones gleaned from studies that examine street level or bottom-up bureaucratic behavior as well as strategic models of judicial behavior. By examining each of these models I was able to test a number of hypotheses related to immigration judge behavior. I also hope to determine whether the multi-institutional model provides additional leverage in understanding the behavior of immigration judges as compared to either attitudinal or top-down bureaucratic approaches.

Hypotheses

Judicial Ideology

Numerous studies have shown that judges of all levels make decisions that reflect their own ideology. (Segal and Spaeth 1993) In previous studies it has been shown that immigration judges who were appointed during a Democratic president's term are more likely to grant

asylum. (Ramji-Nogales, Schoenholtz and Schrag, 2008). This is particularly important given reports that political connections played a larger role in the appointment of immigration judges under the Bush presidency than was previously the norm. (Goldstein and Eggan 2007). In this study I used the scoring system developed by Keith Holmes & Miller, 2013 & 2014 to measure immigration judge ideology. Rather than using the ideology of the nominating president, Keith, Holmes & Miller, examined the pre-nomination backgrounds of the judges in order to determine their likely ideology. For example, judges with INS or prosecutorial backgrounds were scored as more conservative than judges with non-profit immigrant rights backgrounds. I hypothesize that ideology will continue to play a significant role in how immigration judges behave.

Hypothesis #1: The likelihood that an immigration judge will rule on the side of a petitioner increases the more liberal the judge's ideology score

Home Country Factors

A Number of studies have found a link between certain political factors and a petitioner's chance of obtaining asylum. Salehyan and Rosenblum (2008), found that petitioners from countries with close economic and or military ties with the United States were less likely to receive asylum. This is in keeping with the long established policy of using asylum for political purposes. Salehyan and Rosenblum (2008), also found that petitioners from countries that are perceived to be ideologically opposed to the United States, in particular those from former or current communist states, are more likely to obtain asylum

Hypothesis #2: The likelihood that an immigration judge will rule on the side of a petitioner decreases as the level of trade between the petitioner's home country and the United States increases.

Hypothesis #3: The likelihood that an immigration judge will rule on the side of a petitioner decreases if the petitioner's home country has military ties with the United States

Hypothesis #4: The likelihood that an immigration judge will rule on the side of a petitioner increases if the petitioner's home country is or has ever been a Communist country

Judicial Oversight

Although studies have shown that judges of all levels make decisions in accordance with their own ideology, it is apparent that higher courts do exercise some control over lower courts. (Songer, Ginn and Sarver, 2003). Similarly, studies have also shown that the judiciary has the potential to exercise control over the behavior of lower level bureaucrats. Howard and Nixon (2002) found that the Internal Revenue Service (IRS) modified decisions to audit taxes based upon the ideology of the federal court which had jurisdiction over that particular branch of the IRS. It was shown that as the judicial ideology of an appellate court shifted along a liberal/conservative spectrum, the types of audits conducted changed. IRS offices in areas with liberal courts of appeals would be more likely to focus on the equitable aspects of tax policy by auditing the taxes of more rich filers. In offices that were under the jurisdiction of conservative courts of appeals, IRS agents tended to audit larger numbers of less affluent tax returns while reducing the number brought against wealthier tax filers.

In her 2003 study of the behavior of Army Corps of Engineers, Canes-Wrone (2003) found a similar relationship between judicial philosophy and bureaucratic behavior. She found that the ideology of the lower federal courts influenced the behavior of the corps in relation to the grant of permits to develop wetlands. Similarly, Taratoot and Howard (2012) hypothesized that the behavior of ALJ's was influenced by the ideology of the circuit court which has jurisdiction over their decisions.

Since asylum decisions are eventually brought before circuit courts, I hypothesize that circuit ideology will have an impact on the behavior of immigration judges.

Hypothesis #5: The likelihood that an immigration judge will rule in favor of a petitioner increases as the average ideological scores of the justices on the circuit court that has jurisdiction over the immigration judge becomes more liberal

Executive & Congressional Oversight

Studies have shown that both the Presidency and Congress have the power to influence the behavior of bureaucrats as well as judges. (See eg. Moe 1982; Stewart and Cromartie, 1982; Weingast and Moran, 1983) Snyder and Weingart (2000) found that the process of nominating and confirming members of the National Labor Relations Board, provided both the president and Congress with the ability to influence agency behavior.

I test the influence of the executive branch by examining the ideology score of the president in office at the time of the asylum decision. The belief is that presidential ideology will be reflected in attitudes towards the grant or denial of asylum. Immigration Judges would be more likely to grant asylum during liberal President's term than during conservative ones.

Hypothesis #6: The likelihood that an immigration judge will rule in favor of a petitioner increases during presidential terms that are more liberal

The influence of Congressional oversight on Immigration Judge's decisions will also be examined. I test the influence of Congress in a two different ways. The first examines the how the mean ideology score of Congress influences immigration judge's decisions regarding asylum cases. Since Congress has oversight responsibilities over immigration issues, the ideology of the congressional committees that cover immigration issues should influence the likelihood that a petitioner is granted asylum. Taratoot and Howard (2012) found that the ideology of committees with oversight over the court influenced the behavior of ALJs in labor issues. I hypothesize that

judges who are overseen by more liberal committees will be more likely to grant asylum than judges who are overseen by more conservative committees.

Hypothesis #7: The likelihood that an immigration judge will rule in favor of petitioners, decreases as the House or Senate committees responsible for oversight becomes more conservative and increases as those committees become more liberal.

The second method for testing the influence of Congressional oversight on immigration judge behavior examines the role of Congressional attention on immigration related areas. Saleyhan and Rosenblum (2008) found that legislative attention to different aspects of immigration issues influence the likelihood that a petitioner receives asylum. I hypothesize that the more attention that Congress plays towards human rights issues related to immigration, the greater the likelihood that an asylum applicant will obtain success. When Congress pays more attention to immigration enforcement issues, it decreases the likelihood that an applicant obtains success.

Hypothesis #8: The likelihood that an immigration judge will grant asylum increases during periods of increased legislative attention towards human rights issues.

Hypothesis #9: The likelihood that an immigration judge will grant asylum decreases during periods of increased legislative attention towards immigration enforcement issues.

Panel/Agency Effects

Since most immigration judges make decisions in a particular court for their entire careers, I hypothesize that their behavior will be influenced by the culture of the particular court. Judicial scholars have examined how other judges who sit on the same appellate panels influence behavior. This is generally referred to as panel effects. Scholars have found that the ideology of the other judges sitting on a panel can make a judge more or less likely to decide a case in a liberal direction. Although immigration judges do not sit on panels, I hypothesize that the behavior of other judges in the same court will influence their likelihood to grant asylum.

Similarly, bureaucratic scholars have examined the role of organizational characteristics in the exercise of discretion. Such factors as organizational flexibility or formalization can influence bureaucratic behavior at the street level. (Aiken and Hage, 1967; Peyrot 1982) Additionally, scholars such as Kelly (1994) have argued that the values emphasized throughout an agency's culture can influence the level and type of discretion exercised by street-level bureaucrats. I hypothesize that the ideology of the other judges in an immigration judge's court will influence the probability that the judge grants asylum.

Hypothesis #10: The likelihood that an immigration judge will rule in favor of. petitioner increases as the average ideology of the other judges in the same immigration court becomes more liberal

Case Load

A number of studies of street level bureaucrats have revealed that work load plays a part in the exercise of discretion. High case-loads have been shown to increase the role played by bureaucrats personal preferences in making decisions to provide services. (Prottas 1979) When work load is high, street level bureaucrats are more likely to ignore agency policy and make decisions based upon their own preferences. (Taylor & Kelly, 2006). By measuring the total case load handled by each immigration court, and comparing it to the ideology score of the immigration judge making the decision, I hope to be able to gauge the role of work load on the exercise of personal discretion. I hypothesize that as workload increases, judges will be more likely to deny asylum.

Hypothesis #11: The likelihood that an Immigration Judge will grant asylum to a petitioner will decrease the larger the case load assigned to the immigration judge.

Table 1: List of Variables included in Each Model

Variable	Model A (Attitudinal)	Model B (Bureaucratic)	Model C (Multi-Institutional)
Trade	✔	✔	✔
Unemployment %	✔	✔	✔
Human rts Score	✔	✔	✔
Communist State	✔	✔	✔
Represented	✔	✔	✔
Military Aid	✔	✔	✔
Pre/Post 9/11	✔	✔	✔
Gender of Judge	✔	✔	✔
Top Ten Fraud	✔	✔	✔
Defensive Case	✔	✔	✔
Border Court	✔	✔	✔
Imm Judge Ideology	✔	NA	✔
Congress Ideology	NA	✔	✔
Presidential Id	NA	✔	✔
Human rts hearings	NA	✔	✔
Enforcement hearings	NA	✔	✔
Ashcroft Revisions	NA	✔	✔
Gonzales Revisions	NA	✔	✔
Real ID Act	NA	✔	✔
Circuit Ideology	NA	✔	✔
Times Count	NA	NA	✔
Immigration ct mean	NA	NA	✔
Total Case	NA	NA	✔
Judicial ID Type	NA	NA	✔

✔=In Model   NA=Not Applied in Model

This chapter examines three models. Model A is based upon attitudinal theories concerning judicial behavior. Model B is based upon theories developed through top-down studies of bureaucratic behavior. Model C is the multi-institutional model which incorporates theories developed in both top-down and bottom-up bureaucratic studies as well as those developed through attitudinally based judicial studies.

Each of the models contains the same control variables. The control variables include a variable which measures whether the petitioner is represented by an attorney, the type of relief sought by the petitioner, a dummy variable separating the data into pre and post 9/11 decisions, a measure of nationwide unemployment, the human rights record of the petitioner's country of origin, the gender of the judge, whether the petitioner is from a country that produces a large number of fraudulent asylum applicants, whether the petitioner brought the claim as a defense against deportation and whether the immigration court is in a state that is adjacent to a border.

In addition to control variables, Model A includes a variable measuring the ideology of immigration judges based upon their backgrounds.

Model B focuses on the role of other institutions as well as public opinion on the behavior of immigration judges. In addition to the control variables, this top down approach examines a number of variables which are designed to measure the goals and motivations of institutional actors who exercise various levels of oversight over immigration judges. As members of the federal bureaucracy, immigration judges are part of the executive branch and have the potential to be influenced by presidential politics. In order to measure this, model B includes a measure of presidential ideology. To further measure the influence of the executive branch I have included variables which demarcate changes in policy brought about under the

terms of Attorney General Alberto Gonzales and John Ashcroft. In order to measure Congressional influence, I have included a variable which measures mean Congressional ideology during the year that each decision was made, as an additional measure of potential Congressional influence model B includes variables which measure the number of Congressional hearings held regarding immigration enforcement issues as well as hearings that focus on human rights concerns related to immigration respectively. The influence of the passage of the RealID Act, which dramatically changed what types of proofs that asylum applicants must provide is included through the use of a dummy variable. In order to measure the effects of foreign policy concerns, model B includes variables which measure the amount of trade the petitioner's home country has with the United States, whether military aid is exchanged between the countries and whether the country petitioner is from a country that is or has been a traditional ideological enemy of the United States.

Model C includes the control variables as well as the variables used in models A and B. In addition it includes variables which were derived from bottom-up studies of bureaucratic behavior as well as strategic judicial behavior theories. As a measure of case load, I have included a variable which examines the total number of cases handled in each immigration court foe each year. In order to examine whether immigration judges are influenced by the ideology of other judges in the same court, I have included a variable which measures the mean ideology of the other judges in that court who made decisions that year. The impact of public opinion is measured in a variable which counts the number of stories related to asylum issues published in the New York Times for each year.

Results

The results of each of the models are listed together in Table 5.2. The results from the

Model A, the attitudinal model are presented in column A, the results from Model B, the top-down bureaucratic model, are listed in column B and the results from Model C, the multi-institutional model are listed in column C.

Table 2: Results for Attitudinal, Top-down bureaucratic and Multi-Institutional Models

Dependent Variable Decision to deny or grant asylum Coded as 0 or 1

List of Marginal Effects on Possibility of Obtaining Asylum for Each Variable
across its range

Variable	Model A (Attitudinal)	Model B (Bureaucratic)	Model C (Multi-Institutional)
Trade	-.3114	-.3256	□.3166
Unemployment %	-.00921	.06	.087
Human rts Score	.1367	.1386	.1305
Communist State	,1579	.159	.161
Represented	.229	.227	.225
Military Aid	-.1156	-.1117	-.1337
Pre/Post 9/11	-.0084	-.065	-.0934
Gender of Judge	.102	.111	.093
Top Ten Fraud	-.1454	-.1348	--.1296
Defensive Case	-.0828	-.05395	-.0531
Border Court	-.031	-.0432	-.01920
Imm Judge Ideology	.1767	NA	.0992
Congress Ideology	NA	.000006	.00001
Presidential Id	NA	-.0165	-.00186
Human rts hearings	NA	.0438	.0287
Enforcement hearings	NA	-.0363	-.0233
Ashcroft Revisions	NA	.02488	.0841
Gonzales Revisions	NA	-.0020	-.043
Real ID Act	NA	.0835	.0955
Circuit Ideology	NA	-.1037	-.0534
Times Count	NA	NA	.051
Immigration ct mean	NA	NA	.2234
Total Case	NA	NA	-.0278
Judicial ID Type	NA	NA	

Due to the large sample size it is not surprising that a large number of the variables examined

showed statistical significance. However, a number of the variables that show statistical

significance have very small marginal effects on the probability of obtaining asylum. Table 5.3

lists the marginal effects of each variable for each model in which it was applied.

Control Variables

In each model the control variables proved to be significant and in the direction previous

research would suggest. Female judges are more likely to grant asylum than male judges. The

marginal effect of gender ranges from 10% in the attitudinal model to 9.3% in the multi-

institutional model. Petitioners from countries with poor human rights records are 13% more

likely to achieve asylum than those from countries with good human rights records. Petitioners

from countries that produce large numbers of fraudulent asylum claims are between 13% and

14.5% less likely to gain asylum than those from other countries. Claims brought in courts that

are in southern border-states are between 2% and 4% less likely to be granted than those brought

in other states.

Petitioners from countries with which the United States have extensive economic ties are

less likely to obtain asylum than those from countries that do not have high levels of trade with a

difference in probability of obtaining asylum of over 30% in all three models between countries

that do little to no trade with the United States and those that conduct the most trade. Similarly,

petitioners from countries that have military ties with the United States are less likely to receive

asylum than petitioners from countries that do not. Petitioners from countries that receive

military aid from the United States have 9% less of a chance to obtain asylum than those that are

from countries that do not. The fact that political ideology still plays a role in asylum decisions

can be seen in the fact that petitioners from current or former communist states are more likely to

receive asylum than petitioners from other countries. The marginal effect of being from a

country that is or was a communist country is 15%.

One interesting difference is that found in the variable that measures unemployment. While Model A, which examines the attitudinal model, shows a rather small decrease in asylum success as unemployment rates increase, Models B and C show a 6% to 8.7% increase. This is somewhat surprising given that public attitudes towards immigration usually become less welcoming when unemployment rates are high. Previous studies have suggested the same result and hypothesized that the reason behind the uptick in success rates during periods of higher unemployment reflects an increase in the quality of asylum claims brought about during times when fewer applicants are filing asylum claims for economic purposes. Having the control variables prove to be significant and largely in the hypothesized direction gives me confidence that the models are correctly formulated.

Operant Variables

Judicial ideology is shown to be significant and in the direction predicted in models A and C. The more liberal the judge the greater the chance that the judge decides on behalf of a petitioner. The results of the Model A, the attitudinal model, show that across the range of immigration judge ideology, there is an almost 18% difference in the probability of obtaining asylum between the most conservative and liberal judges. Model C, the multi-institutional model, shows an increase of 10%.

A large number of the top-down bureaucratic variables are also significant and in the predicted direction. As Congress as an institution becomes more conservative, petitioners have less of a chance to obtain asylum. However, in the models where this variable was included, the marginal effect was actually quite small, less than .006%. The ideology of the president during the time that a petitioner's case is decided also proves to be significant but with a minor impact

on the probability of asylum success with less than a 1% increase in the multi-institutional model.

A couple of the bureaucratic variables are significant but in unforeseen directions. It was assumed that the additional restrictions established through the Real ID Act and changes wrought under Attorney General Ashcroft would result in a lower level of asylum success, yet both variables show a positive impact on success with both having as high as an 8% increase in the probability of obtaining asylum. The variables which measure the effect of Attorney General Gonzales' reforms proved to be significant in the direction anticipated. The marginal effect of these reforms is shown to be over 4% in Model C but .2% in model B.

Variables associated with bottom-up bureaucratic and strategic judicial approaches also are significant. As the total number of cases handled by an immigration court increase, the chances that an asylum applicant is successful decreases. However, the marginal effect across the range of cases heard by each court is relatively modest at 2.8%. Also, as the mean ideology of the rest of the immigration court becomes more conservative the chances of asylum applicant success decreases significantly. The difference in probability of asylum success between immigration courts with the most conservative ideologies and the most liberal is 22%.

The variable that measures public attention towards asylum issues also proves to be significant. In years where public opinion is focused on asylum related issues, immigration judges are 5.1% more likely to grant asylum.

Table 5.2 sets forth the results of a number of the tests for fitness. The multi-institutional model has higher pseudo-R squared than either of the other two models.

Discussion

Through an analysis of these three models it is possible to draw a number of conclusions. The first is that the results confirm a vast majority of the hypotheses. Liberal judges are more likely to grant asylum than conservative judges. Petitioners from countries with ideological, trade or military ties to the United States are less likely to obtain asylum than those from countries that do not have these ties. During years in which immigration judges are overseen by a Congress that is more concerned with human rights issue, immigration judges are more likely to grant asylum, when focus is on enforcement they are less likely. The ideology of Congress and the Presidency also play a statistically significant role. Judges who make decisions in courts where the other judges are liberal are more likely to grant asylum. The busier that judges are, the more likely they are to deny asylum.

A number of these findings have never been reported before. The large marginal effect on probability of asylum success that mean immigration court ideology plays on chances to obtain asylum is a novel finding. I do not believe that such effects have been shown in a non-collegial court. Since immigration judges do not have to work with each other when they make their decisions, like members of the courts of appeals where collegial behavior has been shown to influence judicial behavior, it is not initially apparent what would cause such a significant impact on the behavior of immigration judges. The effect of mean immigration court ideology may reveal that immigration courts are more similar to street level bureaucracies than traditional courts. Previous studies have shown that the behavior of street level bureaucrats can be influenced by agency culture. When a judge makes decisions in an atmosphere surrounded by judges who are either strongly liberal or conservative it appears that they are either more or less likely to grant asylum respectively.

90

This research is also the first to find a connection between case load and the probability of obtaining asylum. Studies of street level bureaucracies have found that as case load increases, agents are more likely to act in accordance with their personal preferences. The results from this research reveal that immigration judges are also similar to bureaucrats in this manner as well.

Another conclusion that can be drawn from this research is that traditional approaches to understanding immigration judge behavior are not sufficient. Past work on immigration judges has shown that ideology plays a role in their decision making process. (Ramji-Nogales, Schoenholtz, Schrag 2008). But such studies never examined how political, economic and social factors influenced judicial behavior. Conversely, while previous bureaucratically centered studies of immigration judge behavior examined a number political, economic and social factors, they did not include the role of judicial ideology. Furthermore, no previous studies have examined the role of case load and the ideology of other judges in the same court on IJ behavior. The results of my multi-institutional model show that approaches which fail to examine the totality of the factors influencing judicial behavior in asylum proceedings are deficient.

What is clear is that immigration judges do not behave entirely like other judges nor do they behave entirely like bureaucrats. While the results show that these judges make decisions based upon their judicial ideologies, it is apparent that models relying on ideology alone fail to adequately explain the complexity of their decision making process. The attitudinal model, model A, has a significantly lower pseudo-R squared than either of the other two models. Given that ideology plays a significant part in immigration judge behavior, it is not appropriate to apply top-down bureaucratic models either. Model B, the top=down bureaucratic model, has a lower pseudo-R squared than Model C, the multi-institutional model.

However, in order to truly grasp whether the multi-institutional model is a significant advancement upon previous approaches to studying immigration judge behavior it is important to go beyond merely looking at statistics like Pseudo R2. One way to determine the benefits provided by the multi-institutional model can be seen examining how the marginal effects of variables change in size as well as sign across the models. If the only model examined was the attitudinal model (Model A) one would have been misled about the effects of both unemployment as well as the importance of judicial ideology. In Model A, higher unemployment rates have a negative effect on the probability of obtaining asylum. In both Models B & C, higher unemployment has a positive correlation with asylum success. The results from Models B & C are consistent with previous studies regarding the role of unemployment and asylum success. The policy implications of this difference are significant. Rather than finding that judges respond to economic situations in the country by granting asylum at a lower rate, we are left to develop different hypotheses. Previous scholars who have found similar results have posited that high unemployment rates coincide with a reduction in economically based immigration and thus a decrease in the number of immigrants who fraudulently try to use the asylum system. (Keith Holmes & Miller, 2013)

Additionally, the marginal effect of immigration judge ideology on probability of asylum success is exaggerated in the attitudinal model. (Model A). With the addition of the other variables in the multi-institutional model (Model C), the marginal effect goes from 18% in the attitudinal model to 10% in multi-institutional model. While the effect is still quite large in multi-institutional model, a reliance on the outcomes produced in attitudinal would dramatically overstate the influence of judicial ideology on asylum decisions.

An examination of the marginal effects also reveals that the multi-institutional model is a significant improvement over the bureaucratic model (Model B). The most obvious improvement is the inclusion of the judicial ideology variable. The bureaucratic model, does not include judicial ideology which, as discussed above,. has a large marginal effect on the probability of asylum success. Similarly, the inclusion of the variable which measures the mean ideology of the other judges in the same immigration court in the multi-institutional model is a significant improvement over the bureaucratic model. The large marginal effect that the ideology of the other judges on an immigration court has on a petitioner's probability of obtaining asylum could not be ascertained under the bureaucratic model.

Another improvement seen in the multi-institutional model is the inclusion of a measure of public interest in asylum related issues. The variable which measures the number of articles in the New York Times that addressed asylum related issues in the year that a petitioner's case was decided proved the be both statistically significant as well as producing a relatively substantial change in the probability of obtaining asylum. Petitioners who brought their claims in years with the most public attention towards asylum related issues were 5% more likely to obtain asylum than petitioners who brought their claims in years with the lowest level of interest.

While the results have answered a number of questions regarding the behavior of immigration judges, a number of concerns remain. The first question relates to evidence that seems to show that judges rely on different factors in making their decisions depending upon the overall political and social environment. For example, are immigration judges more likely to based their decisions on political factors, such as economic or military ties to a petitioner's country of origin during times when Congress is focusing on cracking down on illegal immigration? When the country is focusing on the plight of refugees and have generally positive

93

feelings towards asylum, are immigration judges more likely to focus on the human rights aspects of a petitioner's claim? I will examine these questions through the use of interaction terms in chapter Seven.

An additional area of concern involves the potential for changes following the events of 9/11. While a number of studies have shown that judges granted asylum at a lower rate following 9/11, there has, as of yet, been no in-depth analysis into how these events changed the factors judges rely upon in making decisions to grant or deny asylum. I attempt to address this concern in chapter Eight.

Yet another concern that I have with this model is based upon what appear to be false assumptions about the role that judicial ideology plays. The models assume that judges of different ideological bents will respond to constraints or lack thereof in the same way. This is a basic assumption of simple rational choice models. Thus we are to assume that a liberal judge will respond to a conservative president in the same way as a conservative judge. Or that policies that provide more discretion to judges will result in similar behavior regardless of judicial ideology. Immigration judges do not appear to behave in this manner. I attempt to address these questions in chapter Nine.

CHAPTER VII -INFLUENCE OF POLITICAL AND SOCIAL FACTORS ON IMMIGRATION JUDGE BEHAVIOR

The results from the models examined in chapter Six suggest that immigration judges respond to trends in political attention towards and public opinion on issues related to immigration. The key appears to be that at different times, certain variables have more influence on immigration judge behavior than others. Sometimes judges appear to give more weight to the human rights records of a petitioner's country of origin. During other periods, judges appear to give more weight towards political concerns, such as the political, economic and military ties a petitioner's home country has with the United States. In this chapter I intend to extend upon the work of Saleyhan and Rosenblum (2008) in order to determine whether immigration judges give more weight to some variables based upon political or public focus. They found evidence that when Congress and the public focus on different aspects of the immigration issue, immigration judges give more weight towards either political or human rights variables. In this chapter I test their hypotheses through the use of interaction effects in my multi-institutional model.

The hypotheses in this chapter delve into to dual role that asylum has played in the United States for decades. The grant or denial of asylum continues to have political connotations both domestically and internationally. During periods where public and political forces are fixated upon immigration as a law enforcement issue, it is reasonable to expect that asylum grant rates will go down. The results from the multi-institutional model in chapter six show this to be true. During these periods, petitioners are still being granted asylum, but the factors that determine likelihood of asylum success change. I hypothesize that during these enforcement centered periods, immigration judges give more emphasis towards the political factors that influence whether a person is granted asylum. When asylum becomes an issue that is tied up

with law enforcement, judges are more likely to place more emphasis on political, economic and military ties between a petitioner's home-country than the human rights record of that country. I also examine what occurs during public and Congressional attention towards issues related to humanitarian aspects of the immigration issue. I hypothesize that during periods where political and public concern focuses on human rights issues related to immigration, judges place more of an emphasis on human rights records from petitioners' countries of origin.

This research is building upon the work of Salehyan and Rosenblum (2008), who examined immigration decisions through the lens of a principal-agent models developed through research on bureaucracies. Salehyan and Rosemblum researched how changes in Congressional attention towards different aspects of the immigration issue, lead to changes in the weight that immigration judges placed upon certain characteristics of asylum applicants in making their determinations of whether to grant protection. In their models, immigration judges were the agents who responded to oversight by principals Congress and the Executive branch. Given the role that asylum has traditionally played in foreign policy, Salehyan and Rosenblum assumed that the executive branch would tend to emphasize immigration judges to focus more on political factors when making decisions whether to grant or deny asylum. The Executive branch would be more concerned with avoiding the grant of asylum to countries that had strong economic or military ties to the United States, while at the same time encouraging the grant of asylum to petitioners who were from countries that were ideologically opposed to the United States. The Executive branch would also press immigration judges to control the flow of illegal immigration by closely monitoring claims brought by people from countries that traditionally produce large numbers of fraudulent claims. Congress, on the other hand would not naturally be focused on emphasizing the political aspects of asylum at all times. Rather, it would be more likely to be

subject to outside influences, such as pressure from the public and interest groups. During times when public attention is drawn towards immigration enforcement problems, Congress would be more likely to be in line with the Executive branch in encouraging their agents the immigration judges to focus on political factors in granting asylum. However, when national attention is drawn to human rights catastrophes, Congress would play a role that was counter to the natural inclinations of the Executive. During these periods, Congress would send signals to immigration judges that human rights concerns should be preeminent in making asylum decisions.

Salehyan and Rosenblum's study was limited however, in the fact that it did not examine any characteristics of immigration judges, the courts they sat on, or the Circuit Courts that had jurisdiction over them. Rather they merely examined the rate at which petitioners from each country were granted asylum. Since my data set includes information regarding the immigration judge who decided each case, the mean ideology of the immigration court where the judge sat and the mean ideology of the circuit that had jurisdiction over any appeal, his will be the first time that these hypotheses will be examined within the context of a model that includes both top-down/principal agent and bottom-up/street level methodologies.

Each of the models contains the same control and operant variables examined in the multi-institutional model as described in chapter Six. The only change in each is the inclusion of an interaction between two variables. Interaction effects were then examined for significance and marginal effect upon probability of success. I chose to examine each of these hypotheses using a different model in order to remove any chance of problems associated with multi-collinearity. Although I recognize that with my large sample size that such problems would most likely not be significant.

Hypotheses

Congressional Oversight

A number of top-down/principal-agent bureaucratic scholars have examined the role that Congress plays in controlling the behavior of the bureaucratic agencies over which they had oversight. (See eg. Calvert, McCubbins and Weingast 1989; McCubbins and Schwartz 1984). Specifically, Saleyhan and Rosenblum (2008), argued that when Congress paid more attention to human rights aspects of immigration, the human rights records of a petitioner's country of origin played a greater role in whether that petitioner received asylum. When Congress focused on enforcement issues, immigration judges would give more concern to political issues, such as military relationships, economic ties, whether the petitioner was from a country that produced a large number of fraudulent claims or whether the petitioner was from a communist country. I intend to examine these findings through interacting the variable that measures the number of enforcement related hearings held in a particular year and variables associated with both the political and human rights aspects of asylum.

Hypothesis #1: The likelihood that an immigration judge will make a decision based on human rights factors increases during periods of increased legislative attention towards human rights issues

Hypothesis #2: The likelihood that an immigration judge will make a decision based on political factors increases during periods of increased legislative attention towards enforcement issues.

Public Opinion

Building upon the Rosenblum and Salehyan (2008) work and Taratoot and Howard (2012), this research examines the extent that public opinion influences immigration judges' decisions whether or not to grant asylum. Rosenblum and Salehyan (2008) found that when public attention is focused on asylum issues, immigration judges are more likely to base asylum

issues on human rights concerns than on political concerns. Through the interaction of the variable which measures public attention towards asylum related issues and the variable which measures the human rights record of the petitioner's country of origin, I will test these findings in the context of the multi-institutional model.

Hypothesis #3: The likelihood that an immigration judge will make a decision based on human rights factors increases during periods of increased media attention towards asylum issues

Models

This chapter examines a number of models each of which is built upon the multi-institutional model outlined in chapter Six. All of the models examine a dichotomous independent variable which is scored as 0, if a petitioner is denied asylum and a 1 if the petitioner is granted asylum. Each model is examined through a logistic regression using the LOGIT command in STATA. Each of the models contains all of the variables present in the multi-institutional model set forth in chapter Six.

The models examined in this chapter first examine how changes in the type and intensity of Congressional attention towards asylum/immigration related issues impacts the weight that political and human rights factors play in a petitioner's probability of obtaining asylum. The next model examines how public attention towards asylum related issues influences the extent that immigration judges rely on the human rights records of a petitioner's country of origin in making determinations whether to grant or deny asylum

The Effect of Congressional Attention Towards Asylum Related Issues

Model D examines the interaction between Congressional attention towards human rights issues during a particular year and the weight placed upon human rights records of a petitioner's country of origin. Congressional attention towards human rights issues is measured by counting

the number of Congressional hearings in a year that had, as their main focus, humanitarian concerns related to immigration. The number of human rights related hearings is then interacted with the human rights/political terror index score for the petitioner's country of origin.

The Effect of Congressional Attention Towards Immigration Enforcement Related Issues

Model E examines the interaction between Congressional attention towards enforcement based aspects of immigration and the weight immigration judges place on whether the United States provides military aid to a petitioner's country of origin. In order to determine the level of Congressional attention being focused on enforcement related issues I measured the number of Congressional hearings held in each year in which enforcement based aspects of immigration were the primary focus. This was then interacted with a variable which measures whether the petitioner's country of origin received military aid from the United States during that particular year.

Models F, G and H, also examine interactions between variables and Congressional attention towards enforcement issues. Model F examines the interaction between Congressional attention towards enforcement issues during a particular year and the weight immigration judges place on whether a petitioner is from a current or former communist country. Model G examines the interaction between the number of enforcement based hearings in Congress during a particular year and the weight immigration judges place on the extent of trade a petitioner's home country has with the United States. Model H examines the interaction between the number of enforcement based hearings in Congress during a particular year and the weight immigration judges place on whether a petitioner is from a country that is one of the top ten in producing fraudulent claims for asylum in the United States.

Public Attention Toward Asylum Related Issues

Model I moves away from focusing on the role of Congress in order to examine the role that public attention plays in shifting the calculus used by immigration judges in making decisions on asylum cases. This model examines the interaction between public attention on asylum related issues and the political terror score of a petitioner's country of origin. Public attention is gauged through a count of the number of New York Times articles which focused on asylum related issues in that particular year. This interaction attempts to determine whether immigration judges place greater weight on human rights factors during periods where the public pays greater attention to asylum related issues.

Results

I.　　Results for Model D: Interaction of the number of human rights hearings and the effect of

human rights record of petitioner's home country on probability of asylum success.

Table 3: Model D: Human Rights Hearings/Human Rights Score

Logistic regression　　　　　　　　Number of obs. =. . 201674
LR chi2(31). . =. 31990.75
Prob > chi2. . =. . 0.0000
Log likelihood = -120574.09　　　　Pseudo R2. . . =. . 0.1171

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.421	.020716	20.32	0.000***	.3803974	.4616026
represented	1.091034	.0242267	45.03	0.000***	1.043551	1.138517
asylum1tort~2	-1.92702	.0186165	-103.5	0.000***	-1.96351	-1.890534
timescount	.0004362	.0001086	4.02	0.000***	.0002234	.0006491
congresside~y	-.000523	.0002982	-1.75	0.079	-.001107	.0000615
nineelevenn	-.278977	.0318026	-8.77	0.000***	-.341309	-.2166455
presidentia~y	.0051932	.0179835	0.29	0.773	-.030053	.0404402
humanrights~s	.0895207	.0444164	2.02	. 0.044*	.0024661	.1765752
hearingsenf~t	-.005970	.0022	-2.71	0.007***	-.010282	-.0016589
unemployment	.0532523	.0116448	4.57	0.000***	.0304289	.0760757
ashcroftrev~s	.2830214	.0495767	5.71	0.000***	.1858529	.3801899
gonzales	-.155523	.0241975	-6.43	0.000***	-.202949	-.108097
realid	.3955889	.0238343	16.60	0.000***	.3488746	.4423032
humanrtster~r2	.0888762	.0840839	1.06	0.291	-.075925	.2536776
trade	-3.12e-06	5.87e-08	-53.15	0.000***	-3.23e-06	-3.00e-06
1.militaryaid	-.482899	.0140435	-34.39	0.000***	-.510424	-.4553748
1.commie	.6454272	.0134767	47.89	0.000***	.6190134	.671841
judicialide~y	.138929	.0090754	15.31	0.000***	.1211416	.1567164
gender	.3913848	.0103091	37.97	0.000***	.3711793	.4115902
toptenimmig~n	-.601204	.0153521	-39.16	0.000***	-.631294	-.571115
totalcase	-5.69e-06	8.14e-07	-6.99	0.000***	-7.28e-06	-4.09e-06
circuitideo~y	-.310145	.0465547	-6.66	0.000***	-.401391	-.2189002
i0e1casetype	-.213129	.0181413	-11.75	0.000***	-.248686	-.1775733
Border	-.052160	.0130349	-4.00	0.000***	-.077708	-.0266123
humanrights~s						
humanrights~ 2	-.133026	.0463204	-2.87	0.004**	-.223812	-.0422403
humanrights~ 3	-.03129	.0448356	-0.70	0.485	-.119166	.0565862
humanrights~ 4	-.061696	.0448567	-1.38	0.169	-.149613	.0262212
humanrights~5	-.114994	.0468661	-2.45	. 0.014*	-.206850	-.0231389
_cons	-.378796	.1382627	-2.74	0.006	-.649786	-.1078061

　　　　* P≤ 0.05　　　** P≤0.01　　***P≤ 0.001

The results of model D in which the number of human rights hearings held by Congress during the year that a petitioner's claim was adjudicated were interacted with the human rights record of the petitioner's home country are mixed. The interaction is significant only for petitioners who come from countries that score 2 and 5 on the political terror scale. Countries that receive a 2 on the political terror scale are generally respectful of human rights. Countries with a political terror score of 5 are considered to be the worst human rights violators. In regards to countries with scores of 2 and 5 , the more hearings that are held in a year regarding human rights, the less the immigration judges rely on human rights in making decisions.

While it is true that the model shows that this interaction is significant, the marginal effect on the probability of obtaining asylum is relatively small. There is only a change of three percent for petitioners from countries that received a political terror score of five and 4% for those whose home country received a score of 2.

Figure 1: Effect On Probability Of Asylum Success By Human Rights Hearings/ Human Rights Record Interaction With All Other Variables At Mean.
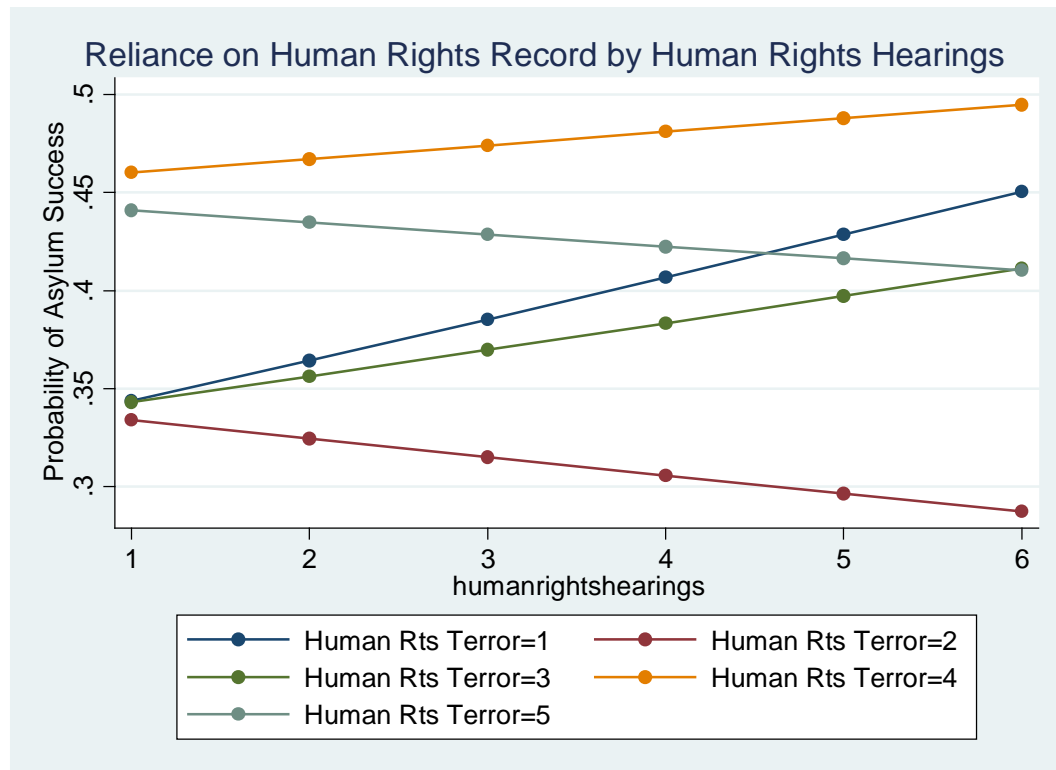
II.   Results for Model E: Interaction of the number of Congressional Enforcement. hearings and the effect of whether the petitioner is from a country that receives U.S Military aid on probability of asylum success.

Table 4: Model E: Enforcement Hearings by Military Aid

Logistic regression

Number of obs = 201674
LR chi2(28) = 32098.81
Prob > chi2 = 0.0000

Log likelihood = -120520.06

Pseudo R2 = 0.1175

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4204422	.0207226	20.29	0.000***	.3798265	.4610578
represented	1.091885	.0242107	45.10	0.000***	1.044433	1.139337
asylum1tort~2	-1.93326	.0186333	-103	0.000***	-1.96978	-1.89674
timescount	.000458	.0001088	4.21	0.000***	.0002449	.0006712
congresside~y	-.000532	.0002971	-1.79	0.073	-.001114	.0000498
nineelevenn	-.301052	.031737	-9.49	0.000***	-.363256	-.238849
presidentia~y	.0114524	.0179299	0.64	0.523	-.023689	.0465943
humanrights~s	.0276888	.0070278	3.94	0.000***	.0139147	.041463
hearingsenf~t	.0116117	.0025409	4.57	0.000***	.0066317	.0165918
unemployment	.051797	.0116351	4.45	0.000***	.0289927	.0746013
ashcroftrev~s	.2925534	.0496334	5.89	0.000***	.1952737	.3898331
gonzales	-.163326	.0242336	-6.74	0.000***	-.210823	-.115829
realid	.400962	.0238999	16.78	0.000***	.3541191	.4478049
humanrtster~r 2	-.11794	.0473833	-2.49	0.013*	-.210809	-.025070
trade	-3.09e-0	5.86e-08	-52.8	0.000***	-3.21e-06	-2.9e-06
1.militaryaid	-.218452	.024783	-8.81	0.000***	-.267026	-.169878
1.commienoc~e	.6611893	.0134745	49.07	0.000***	.6347797	.6875988
judicialide~y	.1376064	.0090763	15.16	0.000***	.1198172	.1553957
gender	.3914899	.0103129	37.96	0.000***	.371277	.4117029
toptenimmig~n	-.591287	.0153359	-38.5	0.000***	-.621345	-.561229
totalcase	-5.59e-0	8.14e-07	-6.87	0.000***	-7.18e-06	-3.9e-06
circuitideo~y	-.321534	.0465714	-6.90	0.000***	-.412812	-.230256
i0e1casetype	-.213075	.0181387	-11.7	0.000***	-.248626	-.177523
Border	-.058644	.0130402	-4.50	0.000***	-.084202	-.033086
militaryaid#/ hearingsenf~t	-.023749	.0018676	-12.7	0.000***	-.027409	-.020089
_cons	-.454688	.1225782	-3.71	0.000	-.694937	-.214439

        * P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model E in which Congressional attention to immigration enforcement related issues is integrated with a variable which measured whether a petitioner is from a country that receives military aid from the United States show that the interaction is both statistically significant as well as producing a rather large change in the marginal effect on the probability of asylum success. As Congress gives more attention to immigration enforcement related issues, whether a petitioner is from a country that receives military aid from the United States plays a more significant role in an immigration judge's decision to grant or deny asylum. Additionally, as the number of enforcement hearings per year increase, the change in probability of success for petitioners from countries that receive military aid decreases by 11%. Across the same range of enforcement hearings, the probability of achieving success for petitioners from countries that are not military allies to the United States increases by 12%.

Figure 2: Effect on Probability of Asylum Success by Enforcement Hearings/
　　　　Military Aid Interaction
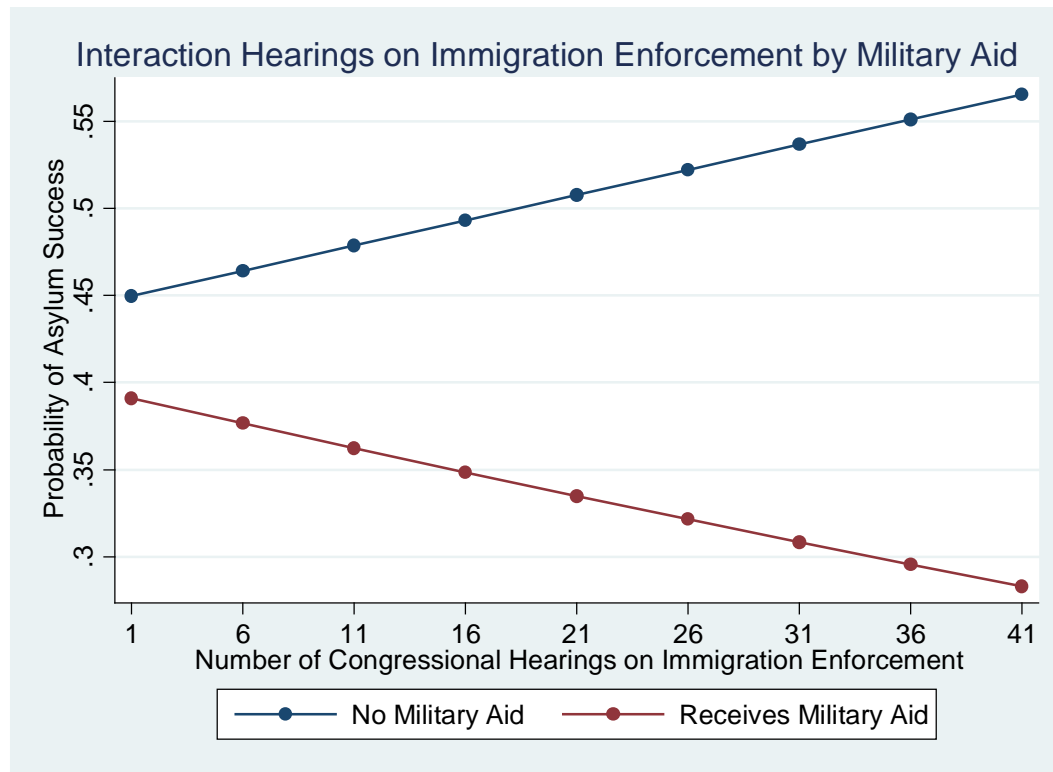
III.　　Results for Model F: Interaction of the number of Congressional Enforcement. hearings and the effect of whether the petitioner is from a country that was or is currently a communist state.

Table 5: Model F: Enforcement Hearings by Commie

Logistic regression

Number of obs = 201674
LR chi2(28) = 32112.58
Prob > chi2 = 0.0000

Log likelihood = -120513.18

Pseudo R2 = 0.1176

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4242596	.0207257	20.47	0.000***	.3836381	.4648812
represented	1.092854	.0242137	45.13	0.000***	1.045396	1.140312
asylum1tort~2	-1.93506	.0186454	-103.7	0.000***	-1.971609	-1.89852
timescount	.0004906	.0001089	4.50	0.000***	.000277	.0007041
congresside~y	-.000558	.000297	-1.88	0.060	-.0011403	.0000239
nineelevenn	-.311116	.0317714	-9.79	0.000***	-.3733872	-.2488454
presidentia~y	.0141247	.0179347	0.79	0.431	-.0210266	.049276
humanrights~s	.0276503	.0070349	3.93	0.000***	.0138622	.0414384
hearingsenf~t	-.012655	.0022652	-5.59	0.000***	-.0170948	-.0082154
unemployment	.052263	.0116359	4.49	0.000***	.0294571	.0750689
ashcroftrev~s	.3071515	.0497064	6.18	0.000***	.2097288	.4045743
gonzales	-.161879	.024253	-6.67	0.000***	-.209414	-.1143442
realid	.4049719	.0239337	16.92	0.000***	.3580627	.451881
humanrtster~r 2	-.103440	.0473652	-2.18	0.029*	-.1962749	-.0106067
trade	-3.10e-06	5.86e-08	-52.89	0.000***	-3.21e-06	-2.98e-06
1.militaryaid	-.488465	.0140483	-34.77	0.000***	-.5159991	-.4609309
1.commienoc~e	.3863623	.0241402	16.00	0.000***	.3390484	.4336762
judicialide~y	.1378731	.0090765	15.19	0.000***	.1200835	.1556627
gender	.390062	.0103137	37.82	0.000***	.3698476	.4102765
toptenimmig~n	-.599357	.0153182	-39.13	0.000***	-.6293808	-.5693347
totalcase	-5.47e-06	8.14e-07	-6.73	0.000***	-7.07e-06	-3.88e-06
circuitideo~y	-.312045	.0465682	-6.70	0.000***	-.4033171	-.2207731
i0e1casetype	-.214624	.0181401	-11.83	0.000***	-.2501779	-.1790701
Border	-.057886	.0130407	-4.44	0.000***	-.0834457	-.032327
commienocom~e /hearingsenf~t	.0253369	.0019162	13.22	0.000***	.0215811	.0290926
_cons	-.248844	.1219063	-2.04	0.041	-.4877764	-.0099126

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model F in which Congressional attention to immigration enforcement

related issues is integrated with a variable which measured whether a petitioner is from a current

or former communist country show that the interaction is both statistically significant as well as

producing a sizable change in the marginal effect on the probability of obtaining asylum. As

Congress gives more attention to immigration enforcement related issues, whether a petitioner is from a current or former communist state country plays a more significant role in an immigration judge's decision to grant or deny asylum.

The results also show a substantial change in the marginal effect on the probability of asylum success when these variables are examined through an interaction. As the number of Congressional enforcement hearings increases from the lowest year of 1 to the highest of 41, the probability of success for petitioners from current or former communist countries increases by 12%. Across the same range of numbers of enforcement hearings, petitioners from non-communist countries decreased by 10%.

Figure 3: Effect on Probability of Asylum Success by Enforcement Hearings/
           Communist Interaction
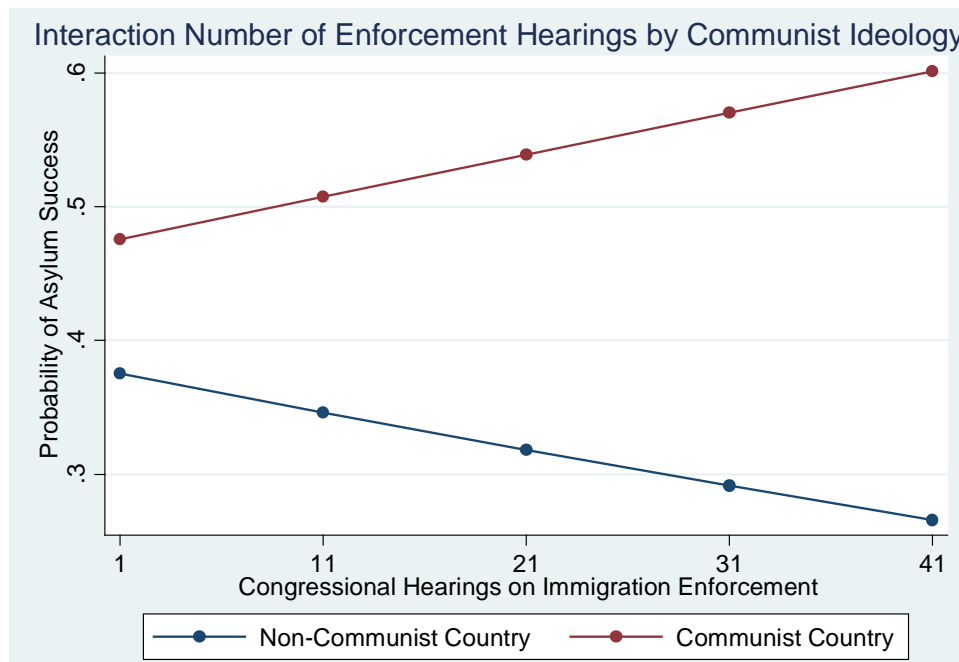
IV.   Results for Model G: Interaction of the number of Congressional Enforcement hearings and the effect of the level of trade a petitioner's country has with the United States has on the probability of success of asylum.

Table 6: Model G: Enforcement Hearings by Trade

Logistic regression

Number of obs = 201674
LR chi2(28) = 32018.98
Prob > chi2 = 0.0000

Log likelihood = -120559.98

Pseudo R2 = 0.1172

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.422977	.020722	20.4	0.000***	.38236	.463592
represented	1.09814	.024241	45.3	0.000***	1.0506	1.14565
asylum1tort~2	-1.91522	.018620	-102	0.000***	-1.951	-1.87872
timescount	.000433	.000108	4.00	0.000***	.0002	.000645
congresside~y	-.000518	.000296	-1.7	0.080	-.0010	.000062
nineelevenn	-.301827	.031746	-9.5	0.000***	-.3640	-.239606
presidentia~y	.009665	.017935	0.54	0.590	-.0254	.044818
humanrights~s	.031349	.007000	4.48	0.000***	.01762	.045070
hearingsenf~t	-.009237	.002237	-4.1	0.000***	-.0136	-.004853
unemployment	.062292	.011673	5.34	0.000***	.03941	.085171
ashcroftrev~s	.289813	.049501	5.85	0.000***	.19279	.386833
gonzales	-.161706	.024112	-6.7	0.000***	-.2089	-.11444
realid	.387567	.023759	16.3	0.000***	.34100	.434134
humanrtster~r	-.099652	.047288	-2.1	0.035*	-.1923	-.006968
trade	-3.7e-06	8.73e-08	-42	0.000***	-4e-06	-3.5e-06
1.militaryaid	-.487696	.014044	-35	0.000***	-.5152	-.460169
1.commienoc~e	.653091	.013437	48.6	0.000***	.6267	.679428
judicialide~y	.140787	.009083	15.5	0.000***	.1229	.15859
gender	.390916	.010310	37.9	0.000***	.37070	.411124
toptenimmig~n	-.594786	.015325	-39	0.000***	-.6248	-.564750
totalcase	-5.7e-06	8.14e-07	-7.0	0.000***	-7e-06	-4.1e-06
circuitideo~y	-.311556	.046543	-6.6	0.000***	-.4027	-.220334
i0e1casetype	-.214805	.018131	-12	0.000***	-.2503	-.179269
Border	-.055421	.013028	-4.2	0.000***	-.0809	-.029885
c.trade#/hearingsenf~t	4.83e-08	5.30e-09	9.11	0.000***	4e-08	5.87e-
_cons	-.307309	.121649	-2.5	0.012	-.5457	-.068881

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model G in which Congressional attention to immigration enforcement related issues is integrated with a variable which measured the extent of trade with the United States show that the interaction is statistically significant. As Congress gives more attention to immigration enforcement related issues, immigration judges give more weight towards economic

connections between a petitioner's country of origin and the United States in making asylum

decisions.

V.   Results for Model H: Interaction of the number of Congressional Enforcement hearings

and the effect of whether a petitioner is from a country that produces a large number of

fraudulent asylum claims has on the probability of success of asylum.

Table 7: Model H: Enforcement Hearings by Top Ten Immigration

Logistic regression

Number of obs = 201674
LR chi2(28) = 31978.51
Prob > chi2 = 0.0000

Log likelihood = -120580.22

Pseudo R2 = 0.1171

Courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4230638	.0207265	20.41	0.000***	.38244	.4636869
represented	1.094554	.0242349	45.16	0.000***	1.0470	1.142053
asylum1tort~2	-1.922767	.0186038	-103.3	0.000***	-1.952	-1.88630
timescount	.0004404	.0001083	4.07	0.000***	.00022	.0006526
congresside~y	-.000525	.0002966	-1.77	. 0.077	-.0010	.0000563
nineelevenn	-.2979722	.0317512	-9.38	0.000***	-.3600	-.235741
presidentia~y	.0085111	.0179352	0.47	. 0.635	-.0264	.0436635
humanrights~s	.0286364	.0069846	4.10	0.000***	.01494	.0423261
hearingsenf~t	-.0094698	.0022968	-4.12	0.000***	-.0137	-.004968
unemployment	.0577819	.0116546	4.96	0.000***	.03493	.0806244
ashcroftrev~s	.2880019	.0494665	5.82	0.000***	.19104	.3849544
gonzales	-.1597692	.0241177	-6.62	0.000***	-.20703	-.112499
realid	.3912275	.0237662	16.46	0.000***	.34464	.4378083
humanrtster~r	-.0991417	.0473073	-2.10	0.036*	-.1916	-.006421
trade	-3.13e-06	5.87e-08	-53.31	0.000***	-3e-06	-3.01e-06
1.militaryaid	-.4895245	.0141083	-34.70	0.000***	-.5177	-.461872
1.commienoc~e	.6533793	.0134423	48.61	0.000***	.62703	.6797256
judicialide~y	.139213	.009077	15.34	0.000***	.12142	.1570035
gender	.3918911	.0103092	38.01	0.000***	.37168	.4120968
1.toptenimm~n	-.7205772	.0235715	-30.57	0.000***	-.7667	-.674377
totalcase	-5.63e-06	8.14e-07	-6.92	0.000***	-7e-06	-4.03e-06
circuitideo~y	-.3123375	.0465478	-6.71	0.000***	-.4036	-.221105
i0e1casetype	-.2143848	.0181319	-11.82	0.000***	-.2492	-.178847
Border	-.0563014	.0130337	-4.32	0.000***	-.08184	-.030755
toptenimmig~n/ hearingsenf~t	.0111735	.0017128	6.52	0.000***	.00781	.0145305
_cons	-.2692018		-2.21	0.027	-.50762	-.030773

        * P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model H in which Congressional attention to immigration enforcement related issues is integrated with a variable which whether a petitioner is from a country that produces a large number of fraudulent asylum claims to the United States, shows that the interaction is statistically significant but partially in a direction that was not anticipated. As Congress gives more attention to immigration enforcement related issues, immigration judges are significantly less likely to grant asylum to petitioners from countries that are not top, with a 9% reduction in probability of asylum success. That is in keeping with the predictions in the hypothesis. However, there is actually a small increase of 2% in the probability during these periods for those petitioners from countries that are in the top ten fraud producers. This relatively small increase in marginal effect on the probability of asylum success can be explained in a number of ways. Perhaps the results reflect the fact that immigration judges grant asylum at low rates to petitioners from countries that produce large numbers of claims regardless of the type of attention that Congress is paying towards immigration issues.

Figure 4: Effect on Probability of Asylum Success by Enforcement Hearings/ Top Ten Fraud
Interaction all other variable at mean.
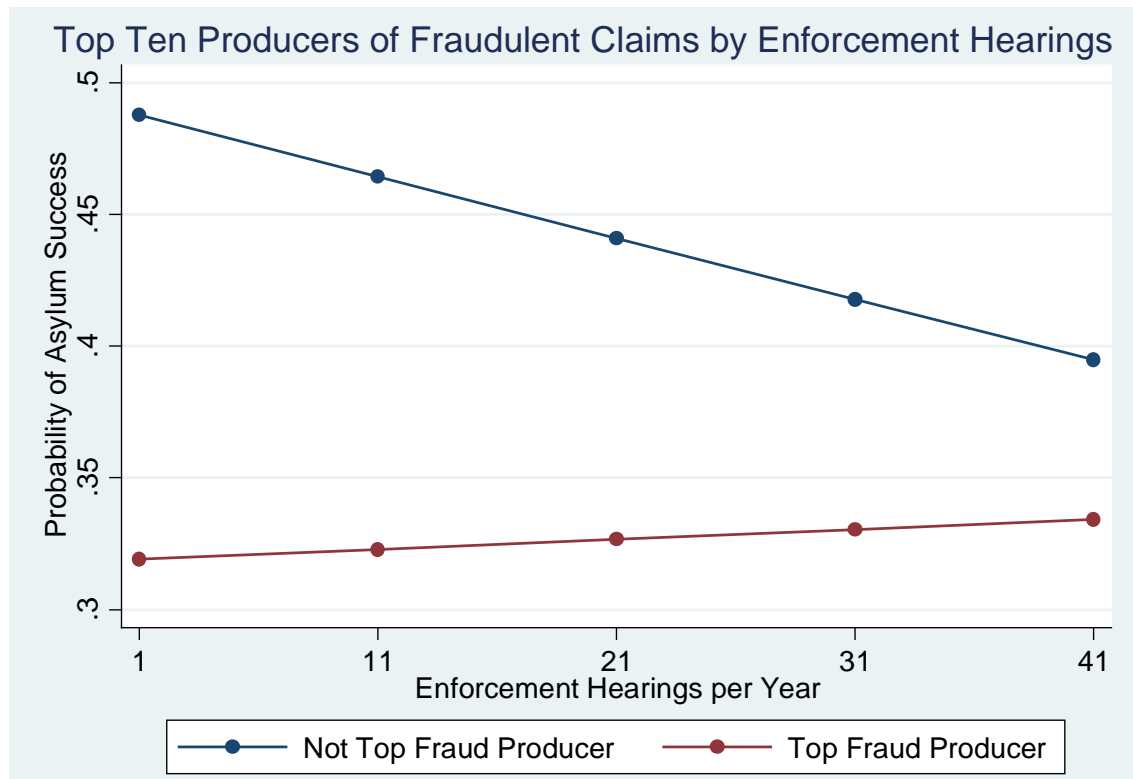
VI.   Results for Model I: Interaction of variable measuring the number of articles on the New

York Times and the effect of the human rights record of the petitioner's country of origin on the

probability of success of asylum petition.

Table 8: Model I: Times Count by Human Rights Terror Score

Logistic regression   Number of obs = 201674
                                              LR chi2(31) = 31994.63
                                              Prob > chi2 = 0.0000
Log likelihood = -120572.16   Pseudo R2 = 0.1171

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
represented	1.092854	.0242301	45.10	0.000***	1.045364	1.140344
asylum1tort~2	-1.92454	.0186326	-103.2	0.000***	-1.961062	-1.888023
timescount	.0003042	.0002579	1.18	0.238	-.0002013	.0008098
congresside~y	-.000493	.0003012	-1.64	0.101	-.001084	.0000966
nineelevenn	-.301134	.0318025	-9.47	0.000***	-.3634665	-.2388031
presidentia~y	.0157975	.0179962	0.88	0.380	-.0194743	.0510693
humanrights~s	.0303598	.0070039	4.33	0.000***	.0166324	.0440872
hearingsenf~t	-.003832	.0021899	-1.75	0.080	-.0081245	.0004597
unemployment	.0587874	.01168	5.03	0.000***	.035895	.0816798
ashcroftrev~s	.2739696	.0495123	5.53	0.000***	.1769273	.3710119
gonzales	-.164255	.0241576	-6.80	0.000***	-.2116039	-.1169077
realid	.3879305	.0238144	16.29	0.000***	.3412551	.4346059
humanrtster~r -	.2577968	.1764452-	1.460	.144	-.603623	.0880294
trade	-3.12e-06	5.97e-08	-52.22	0.000***	-3.23e-06	-3.00e-06
1.militaryaid	-.471280	.0141311	-33.35	0.000***	-.4989767	-.443584
1.commienoc~e	.6489751	.0135516	47.89	0.000***	.6224146	.6755357
judicialide~y	.1388212	.0090751	15.30	0.000***	.1210344	.1566081
gender	.3911222	.0103095	37.94	0.000***	.370916	.4113284
toptenimmig~n	-.603822	.0154035	-39.20	0.000***	-.6340128	-.5736322
totalcase	-5.50e-06	8.14e-07	-6.76	0.000***	-7.10e-06	-3.91e-06
circuitideo~y	-.308650	.0465613	-6.63	0.000***	-.399909	-.2173922
i0e1casetype	-.213790	.0181422	-11.78	0.000***	-.2493487	-.1782325
mean5	.4212259	.0207186	20.33	0.000***	.3806181	.4618336
Border	-.052064	.0130377	-3.99	0.000***	-.0776176	-.0265109
humanrtster~r#/c.t imescount 2	.0002353	.0002498	0.94	0.346	-.0002544	.0007249
humanrtster~r#/c.t imescount 3	.0000943	.0002388	0.39	0.693	-.0003738	.0005624
humanrtster~r#/c.t imescount 4	-.000087	.0002386	-0.37	0.713	-.0005553	.00038
humanrtster~r#/c.t imescount 5	.0005475	.0002457	2.23	0.026*	.000066	.001029
_cons	-.256688	.2007729	-1.28	0.201	-.6501963	.1368191

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model I, in which public attention towards asylum related issues is integrated with the political terror score of a petitioner's country of origin is statistically significant only for petitioners from countries that have received a human rights score of 5 during the year that the petitioner seeks asylum. The marginal effects on the probability of asylum success for petitioners from countries that have received a score of 5 on the Political/Terror scale are quite substantial. Countries that receive a human rights score of 5 are considered to have the largest number of human rights violations. As the public pays more attention towards asylum related issues, petitioners from these worse offending countries have a 13% greater chance of obtaining asylum across the range of enforcement hearings.

Figure 5: Effect on Probability of Asylum Success by Timescount/ Human Rights Record Interaction
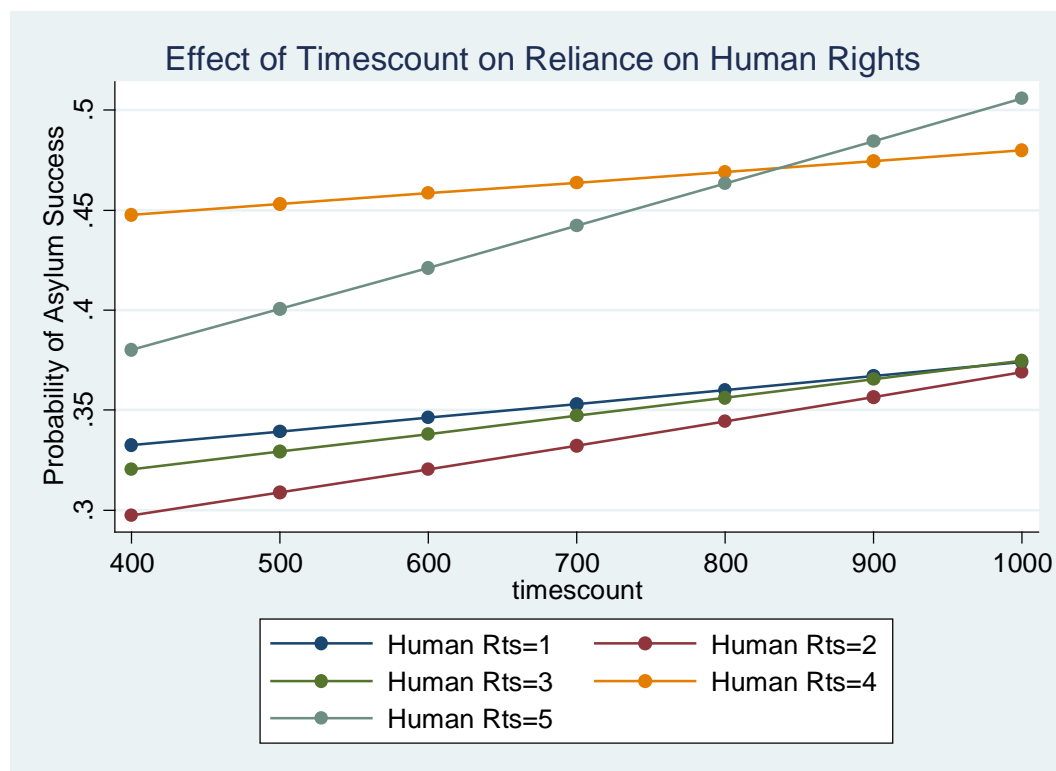
Discussion

The results confirm my concerns about potential shortcomings with the multi-institutional model set forth in chapter 6. As Congressional and public attention towards different aspects of asylum related issues changes, the marginal effects of political and human rights factors on the probability of asylum success often change in dramatic ways. These interactions reveal that more is going on then shown in the basic multi-institutional model. Table 10 presents a comparison of the variables with the largest marginal effects in the basic multi-institutional model with the effects revealed through the interaction effects tested in models D-I.

Table 9: Comparison Of Marginal Effects Of Most Significant Variables Between Interaction
Models And The Basic Multi-Institutional Model

Variables	Model. C Original Multi-Institutional Model	Model D Human rts hearings by human rts score	Model E Enforcement Hearings by Military Aid	Model F Enforcement Hearings by Commie	Model G Enforcement Hearings by Trade	Model H Enforcement Hearings by Top Ten Immigration	Model I Times Count by Human Rts. Score
Immigration Ct. Mean	.2234	.302	.31	.34	.302	.303	.302
Immigration Judge ID	.0992	.102	.101	.101	.103	.102	.102
9/11 Dummy	-.0934	-.066	-.072	-.074	-.072	-.071	-.072
Human rts/Terror	.1305	.112	.105	.109	.107	.106	.1107
Trade	-.3166	-.352	-.35	-.352	-.356	-.352	-.352
Military Aid	-.1337	-.1169	-.115	-.118	-.118	-.118	-.114

These results confirm my second hypothesis regarding the role of Congressional attention towards enforcement issues and the weight immigration judges give towards political factors in making their asylum decisions. As Congressional attention focuses on enforcement related issues, immigration judges place more emphasis on military ties, political ideology and trade in making their decisions. The only political variable that did not produce the results expected when interacted with increased Congressional attention towards enforcement related issues was the one that measured whether a petitioner was from a country that produced a large number of fraudulent asylum claims. Perhaps the results showing in an increase in the probability can be explained by the fact that petitioners from these countries already have such a low probability of success that when focus is shifted to more enforcement related issues it results in immigration judges being focused on other aspects of the petitioner's claim.

The results do not confirm my first hypothesis however. When Congressional attention is drawn towards human rights related issues, there is a significant effect on immigration judges, but that effect in is the opposite direction for the two groups for which it is significant. Petitioners from countries that have human rights scores of 2 and 5, actually see a reduction in the chances of obtaining asylum when increased attention is paid towards human rights related issues. It is difficult to explain this, but perhaps it speaks to other characteristics that are not modeled which are in common with countries that receive these human rights scores. That is to say that there might be something in common with countries that receive certain human rights scores that do not directly correspond to the types of factors that immigration judges look at when they are making asylum decisions during times of increased Congressional attention towards human rights issues. Further research is needed in order to explore this possible

The results confirm my third hypothesis, regarding the role of public attention to asylum related issues and increased attention towards human rights issues in making asylum decisions. Public attention significantly increases the weight immigration judges place on human rights conditions for petitioners from countries with the worst human rights records.

The findings from each of the models examined in this chapter provide additional insight into the efficacy of the multi-institutional model laid out in chapter 5. Each adds credence to my central assertion that immigration judges are susceptible to a multitude of societal and institutional forces when making their decisions. outside influence from political institutions that have oversight over their activities as well as public attention towards asylum related issues. Specifically, these results reveal that at different times, it is easier for different sorts of petitioners to obtain asylum. When attention is drawn to the enforcement side of immigration issues, immigration judges are less likely to grant asylum to petitioners from countries that have close ties to the United States. During these same periods, immigration judges are more likely to grant asylum to petitioners fleeing countries that have been or are currently ideologically opposed to the United States. When public attention is drawn to human rights aspects of the immigration issue, immigration judges look more closely at the human rights records of a petitioner's country of origin when making a decision to grant or deny asylum.

The results have several primary impacts on previous research. The first concerns how these judges respond to different pressures placed upon them. Rather than responding uniformly to increased oversight, these results show that the focus of the oversight changes the cues that the judge relies upon in making a decision. It is not as simple as judges granting asylum at a lower rate when Congress focuses on enforcement. Instead, it appears that the type of Congressional attention impacts the way that these judges exercise their discretion. While previous studies have

revealed that a principal can have an impact on how agents perform their duties, it has never been shown that this oversight has resulted in so fundamental a shift in how an agent interprets the legal factors which determine whether an applicant obtains the sought after relief.

The results also confirm that these judges are influenced by the political institutions that have oversight over them. While these results confirm the findings of Salehyan and Rosenblum (2008) and Taratoot and Howard (2009), they go beyond in a number of ways. The first is through an increased understanding of the behavior of Immigration Judges in particular. No previous study has examined these interactions through a model that includes the ideology of the presiding judge as well as the individual characteristics of the petitioner that are included in this model. The results of my model show that even though the ideologies of the individual judges, as well as the mean ideologies of the courts where they sit and the circuits which have jurisdiction over them play a significant role in how these judges make decisions, Asylum decisions are still influenced by the goals of the Executive and Congress. My multi-institutional model is thus able to increase our understanding of how immigration judges behave in a case by case basis. It also helps to better explain how the conflicting aspects of asylum, as both a political tool as well as a method to protect human rights, play out through the actions of immigration judges. During times when the agenda of Congress coincides with the foreign policy and political concerns of the executive, immigration judges largely respond by granting asylum in ways that support these goals.

Additionally, these results speak to the role that the public plays in the decisions of immigration judges as well as potentially shedding light on the behavior of other lower level judges. As the public pays more attention to asylum related issues, immigration judges place more emphasis on human rights in making their decisions. While this apparent connection

119

between judicial behavior and public opinion has been shown in the context US Supreme Court to state courts (see e.g. Giles et. Al 2008, Barnum 1985), it has never been shown in the context of a court that operates almost exclusively outside of direct public control or attention.

The interaction models examined in this chapter also have the potential to shed light on the behavior of other administrative law judges. The fact that, through the use of the human rights records of a petitioner's country of origin, these models were able to provide a degree of control for saliency is a major step forward in understanding ALJ behavior. Previous studies have found it difficult to adopt a measure that controls for the strength of a petitioner's case. It is difficult, for example, to determine the relative strengths of a petitioner's social security claim without undertaking the type of in-depth case by case analysis that would be impossible when undertaking a large-n quantitative analysis of judicial behavior. Since the grant or denial of asylum is largely based upon the types of state actions which are compiled in human rights reports, the models tested in this dissertation are able to examine ALJ behavior more precisely. It therefore cannot be argued that variations in the rate that immigration judges grant asylum is based more on the types of petitioners they are seeing. Rather, as each case examined includes a human rights score, the analysis can begin with a baseline probability of success. If an immigration judge hears an inordinate number of cases from petitioners fleeing from the Netherlands or other country in which human rights are largely protected, his/or her low grant rate can be explained by the fact that the type of persecution which forms the basis of asylum claims rarely ever occurs in the Netherlands. Conversely, an immigration judge who hears cases almost exclusively from the Congo or North Korea might grant asylum at a very high rate regardless of other factors that might influence these decisions because both of those countries have extremely poor human rights records. Because of this characteristic of asylum claims,

120

studies of immigration judge decisions in asylum cases provide perhaps a unique situation in examining ALJ behavior.

The results lead to further questions regarding the complexity of factors that influence the behavior of immigration judges. Chapter 8 examines whether the events of 9/11 lead to changes in how immigration judges made decisions in asylum cases. The intent is to go beyond merely determining whether immigration judges granted asylum at a different rate following 9/11, instead the chapter will consider whether the events lead to an essential change in how immigration judges made decisions.

CHAPTER VIII: THE EFFECTS OF 9/11 ON IMMIGRATION JUDGE BEHAVIOR

In this chapter I examine whether the events of 9/11 brought about any changes in how immigration judges make decisions. Building upon research which has examined the extent of Supreme Court deference towards the executive branch during times of war, I examined whether similar deference was shown by immigration judges following 9/11. The marginal effect of the variable that measures whether a petitioner's case was decided before or after 9/11 is -9.3% in the multi-institutional model set forth in in chapter 6. Since the grant or denial of asylum is often tied to the political concerns of the executive, immigration judges are in the position of making decisions every-day that have potential foreign policy implications. The events of 9/11 brought these foreign policy considerations to the fore as the United States sought allies to help fight the war on terror.

The models in this chapter consider the effects of the interaction of variables measuring political and economic ties between the United States and the petitioner's home country with the variable that measures whether a case was decided before or after 9/11. The interaction between the 9/11 variable and the variable which measures the human rights record of the petitioner's country of origin was also examined. Additionally, the interaction between the variable that measures the level of public attention towards asylum issues and the 9/11 variable was included into the multi-institutional model. What I discovered was that the events of 9/11 resulted in immigration judges placing greater emphasis on the political aspects of the asylum process as opposed to human rights concerns.

The Effect of 9/11

Studies have found that judges behave differently during times of war or when national security is an issue. (Fix & Randazzo 2010) Fix and Randazzo presented evidence that all levels of federal courts showed increased levels of deference in regards to political questions and the act of state doctrine during times of national security crises. In making decisions post 9/11, immigration judges were acting in a climate where other federal judges usually show increased deference to the executive branch. I hypothesize that in doing so, a return was made to a more Cold War approach to asylum issues, in which asylum was granted in lower numbers to petitioners from countries with close military and/or economic ties to the United States and granted in greater numbers to ideological enemies. I also hypothesize that this reduction in the probability of obtaining asylum was not equally felt across all types of asylum petitioners and that after 9/11, human rights concerns became less relevant than political concerns in the grant of asylum. After 9/11 immigration judges placed more emphasis on political factors such as military aid, whether the petitioner was from a country that was ideologically opposed to the United States as well as the extent of trade between with United States. After 9/11 immigration judges placed less emphasis on the human rights records of petitioners' countries of origin than before.

Hypothesis #1: The likelihood that an immigration judge will make a decision based on human rights factors decreased after 9/11

Hypothesis #2: The likelihood that an immigration judge will make a decision based on political factors increases after 9/11

Models

In this chapter I examine five variations to my multi-institutional model which interact a number of variables with the variable that measures whether a petitioner filed for asylum before

or after 9/11. Aside from the inclusion of these interaction terms, each of the models use the same variables as those set forth in the multi-institutional model set forth in chapter 5. All of the models examine a dichotomous independent variable which is scored as 0, if a petitioner is denied asylum and a 1 if the petitioner is granted asylum. Each model is examined through a logistic regression using the LOGIT command in STATA. The models examined in this chapter are labeled J, K, L, M and N.

Each of these models examine whether judges placed more emphasis on political rather than human rights related aspects of petitioners' claims following the events of 9/11. Model J examines the interaction between the human rights records of the petitioner's country of origin and the variable that measures whether the decision was handed down before or after 9/11. Model K examines the interaction between whether a petitioner is from a current or former communist country and the variable that measures whether the decision was handed down before or after 9/11. Model L examines the interaction between the amount of trade a petitioner's country of origin has with the United States and the variable that measures whether the decision was handed down before or after 9/11. Model M examines the interaction between military ties to the United States and a variable that measures whether the decision was handed down before or after 9/11. Model N examines the interaction between the variable that measures whether a petitioner is from a country that produces a large number of fraudulent claims and the variable that measures whether the decision was handed down before or after 9/11.

Results

Results for Model J: Interaction of variable measuring whether the petition was brought before or after 9/11 with the variable which measures the human rights record of the petitioner's home country on the probability of success of asylum.

Table 10: 9/11 by Human Rights Terror

Logistic regression

Number of obs = 201674
LR chi2(32) = 32116.95
Prob > chi2 = 0.0000

Log likelihood =-120511

Pseudo R2 = 0.1176

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4211209	.0207218	20.32	0.000***	.3805069	.4617348
1.represented	1.097138	.0242449	45.25	0.000***	1.049618	1.144657
asylum1tort~2	-1.941217	.019005	-102.14	0.000***	-1.978466	-1.903968
timescount	.0003725	.0001085	3.43	0.001**	.0001597	.0005852
congresside~y	-.0004628	.0002972	-1.56	0.119	-.0010453	.0001196
1.nineelevenn	.0309511	.1191542	0.26	0.795	-.2025868	.264489
presidentia~y	.0410753	.0181816	2.26	0.024*	.0054401	.0767105
humanrights~s	.031654	.0070098	4.52	0.000***	.0179151	.045393
hearingsenf~t	-.0025553	.002198	-1.16	0.245	-.0068633	.0017527
unemployment	.0681081	.0117382	5.80	0.000***	.0451017	.0911146
1.ashcroftr~s	.2654556	.04955	5.36	0.000***	.1683394	.3625719
1.gonzales	-.1708395	.0241909	-7.06	0.000***	-.2182528	-.1234262
1.realid	.3790327	.0238486	15.89	0.000***	.3322903	.4257751
humanrtster~r 2	.0933127	.109046	0.86	0.392	-.1204135	.3070388
trade	-3.11e-06	6.00e-08	-51.83	0.000***	-3.23e-06	-2.99e-06
1.militaryaid	-.4709316	.0141039	-33.39	0.000***	-.4985747	-.4432886
1.commienoc~e	.6394702	.0135163	47.31	0.000***	.6129788	.6659616
judicialide~y	.1392179	.0090783	15.34	0.000***	.1214248	.157011
1.gender	.3906509	.0103125	37.88	0.000***	.3704388	.4108629
1.toptenimm~n	-.6224483	.0154406	-40.31	0.000***	-.6527112	-.5921853
totalcase	-5.28e-06	8.15e-07	-6.48	0.000***	-6.88e-06	-3.68e-06
circuitideo~y	-.3015231	.046636	-6.47	0.000***	-.392928	-.2101182
i0e1casetype	-.2120001	.0181587	-11.67	0.000***	-.247590	-.176409
Border	-.0440505	.0130956	-3.36	0.001**	-.069717	-.018383
nineelevenn#/humanrtster~r .1 2	-.2280073	.1208328	-1.89	0.059	-.464835	.0088207
nineelevenn#/humanrtster~r 1 3	-.4383135	.1164275	-3.76	0.000***	-.666507	-.210119
nineelevenn#/humanrtster~r 1 4	-.2494796	.1164186	-2.14	0.032*	-.477655	-.021303
nineelevenn#/humanrtster~r 1 5	-.6035658	.1182033	-5.11	0.000***	-.8352401	-.3718916
_cons	-.67351	.1537551	-4.38	0.000	-.974864	-.372155

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model J in which a variable measuring the human rights record of a petitioner's home country and a variable which measures whether the asylum decision was made before or after the events of 9/11, show a statistically significant interaction for petitioners from countries with human rights scores of 2,3,4 and 5. After 9/11 immigration judges placed less emphasis on human rights conditions when making their decisions. The marginal effect on the probability of success was substantial for petitioners from countries that received certain scores while non-existent for others. Petitioners from countries that are scored as a 1 in the human rights/terror scale, those with the best record on human rights issues,. see no change in the rate of success in asylum claims before or after 9/11. The most significant change in probability post 9/11 was for petitioners from countries with the worst human rights records. Petitioners from countries with scores of 5 had a reduction of 14.5% in their probability of obtaining asylum.

Figure 6: Model J: Effect on Probability of Asylum Success by 9/11
         Human Rights Record Interaction

Role of Human Rights in Asylum Decisions Pre/Post 9/11
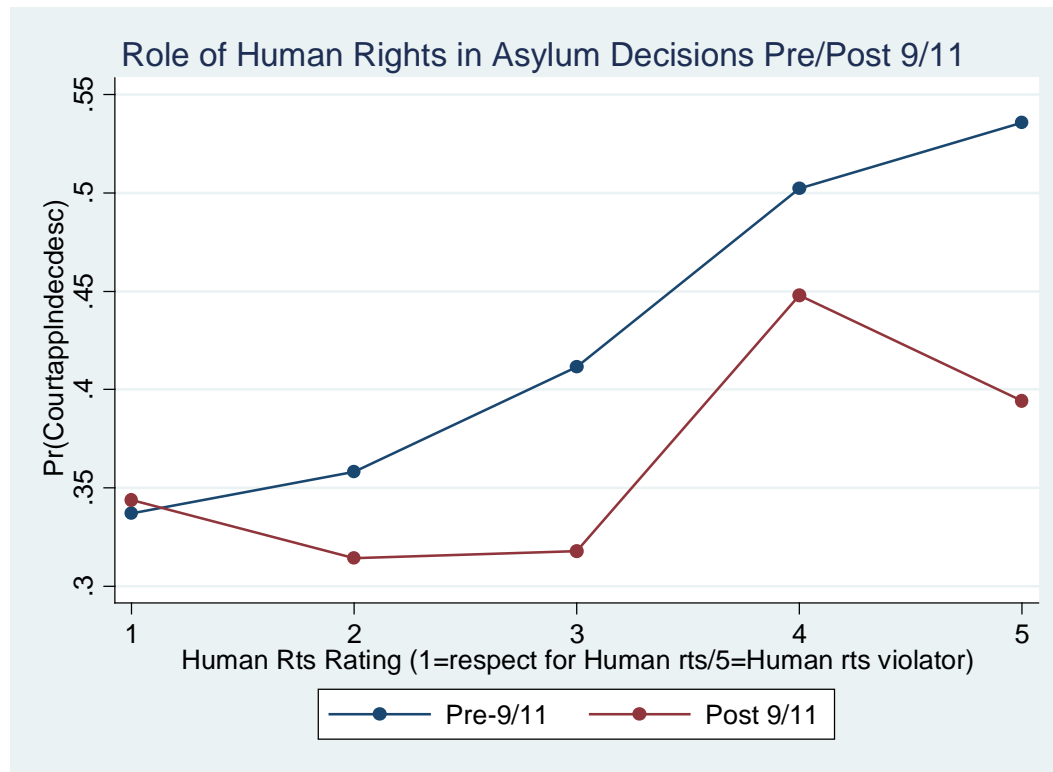
II. Results for Model K: Interaction of variable measuring whether the petition was brought

before or after 9/11 with the variable which measures whether the petitioner was from a

communist country on the probability of success of asylum.

Table 11: Model K: 9/11 by Commie No Commie
Logistic regression

Number of obs = 201674
LR chi2(29) = 32061.56
Prob > chi2 = 0.0000

Log likelihood = -120538.69

Pseudo R2 = 0.1174

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4244241	.0207282	20.48	0.000***	.3837976	.4650507
1.represented	1.099785	.0242354	45.38	0.000***	1.052284	1.147285
asylum1tort~2	-1.958533	.0190538	-102.79	0.000***	-1.99587	-1.921188
timescount	.0004304	.0001085	3.97	0.000***	.0002177	.0006431
congresside~y	-.0005143	.0002976	-1.73	0.084	-.001097	.0000689
1.nineelevenn	-.4011054	.0336663	-11.91	0.000***	-.46709	-.3351207
presidentia~y	.0154857	.0179276	0.86	0.388	-.019651	.0506231
humanrights~s	.0291623	.0070078	4.16	0.000***	.0154272	.0428974
hearingsenf~t	-.0044664	.0021848	-2.04	0.041*	-.008748	-.0001843
unemployment	.05707	.0116466	4.90	0.000***	.0342431	.079897
1.ashcroftr~s	.2890546	.0495865	5.83	0.000***	.1918668	.3862424
1.gonzales	-.156616	.024185	-6.48	0.000***	-.204017	-.1092144
1.realid	.395188	.0238488	16.57	0.000***	.3484452	.4419307
humanrtster~r 2	-.1160575	.0473825	-2.45	0.014*	-.208925	-.0231895
trade	-3.11e-06	5.90e-08	-52.76	0.000***	-3.23e-06	-3.00e-06
1.militaryaid	-.4905652	.0140703	-34.87	0.000***	-.518142	-.4629879
1.commienoc~e	.5067821	.0199496	25.40	0.000***	.4676816	.5458826
judicialide~y	.1381059	.0090769	15.22	0.000***	.1203154	.1558964
1.gender	.3895692	.0103124	37.78	0.000***	.3693573	.4097811
1.toptenimm~n	-.6044292	.0153288	-39.43	0.000***	-.634473	-.5743853
totalcase	-5.51e-06	8.14e-07	-6.77	0.000***	-7.11e-06	-3.92e-06
circuitideo~y	-.3162199	.0465602	-6.79	0.000***	-.407476	-.2249635
i0e1casetype	-.2114509	.0181422	-11.66	0.00***	-.247008	-.1758929
Border	-.0568006	.0130396	-4.36	0.000***	-.082357	-.0312434
nineelevenn#/commien ocom~e 1 1	.2240291	.0225991	9.91	0.000***	.1797357	.2683226
_cons	-.220573	.121907	-1.81	0.070	-.459506	.0183603

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model K in which a variable measuring whether a petitioner is from a current or

former communist country is interacted with a variable which measures whether the asylum

decision was made before or after the events of 9/11 proves to be statistically significant. The

marginal effect of this shift was relatively small. Before 9/11 the marginal effect of whether a petitioner was from a communist or former communist country was 13%, after 9/11 the marginal effect was 17%, a difference of 4%.

Figure 7: Model K: Effect on Probability of Asylum Success by Communist Ideology Interaction

	Pre 9/11	Post 9/11
Communist/Former Communist	.54	.49
Non-Communist	.41	.32

Results for Model L: Interaction of variable measuring whether the petition was brought before or after 9/11 with the variable which measures the level of trade between petitioner's country of origin and the United States on the probability of success of asylum.

Table 12: Model L: 9/11 by Trade

Logistic regression

Number of obs = 201674
LR chi2(29) = 31969.38
Prob > chi2 = 0.0000

Log likelihood = -120584.78

Pseudo R2 = 0.1170

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4216834	.0207209	20.35	0.000***	.3810711	.4622957
1.represented	1.097344	.0242542	45.24	0.000***	1.049807	1.144882
asylum1tort~2 1	-1.940373	.019062	-101.79	0.000***	-1.97773	-1.903012
timescount	.0004189	.0001083	3.87	0.000***	.0002067	.0006312
congresside~y	-.0005083	.0002969	-1.71	0.087	-.001090	.0000737
1.nineelevenn	-.3078715	.0327182	-9.41	0.000***	-.371998	-.243745
presidentia~y	.0086333	.017958	0.48	0.631	-.026563	.0438303
humanrights~s	.0283883	.0069979	4.06	0.000***	.0146726	.0421039
hearingsenf~t	-.0047084	.0021851	-2.15	0.031*	-.008991	-.0004257
unemployment	.0554977	.0116454	4.77	0.000***	.0326732	.0783223
1.ashcroftr~s	.276858	.0494606	5.60	0.000***	.1799169	.3737991
1.gonzales	-.157304	.0241295	-6.52	0.000***	-.204597	-.110011
1.realid	.3893977	.0237828	16.37	0.000***	.3427841	.4360112
humanrtster~r 2	-.1008219	.0473116	-2.13	0.033*	-.193551	-.0080928
trade	-3.31e-06	9.07e-08	-36.46	0.000***	-3.48e-06	-3.13e-06
1.militaryaid	-.482436	.0140575	-34.32	0.000***	-.509988	-.4548838
1.commienoc~e	.6538426	.0134506	48.61	0.000***	.62748	.6802052
judicialide~y	.1392328	.0090754	15.34	0.000***	.1214453	.1570203
1.gender	.3913593	.0103084	37.97	0.000***	.3711552	.4115634
1.toptenimm~n	-.6016121	.0153378	-39.22	0.000***	-.631673	-.5715505
totalcase	-5.60e-06	8.14e-07	-6.89	0.000***	-7.20e-06	-4.01e-06
circuitideo~y	-.3154577	.0465628	-6.77	0.000***	-.406719	-.2241963
i0e1casetype	-.2144272	.0181399	-11.82	0.000***	-.249980	-.1788737
Border	-.0567563	.0130373	-4.35	0.000***	-.082309	-.0312036
nineelevenn#/c.trade 1	2.14e-07	8.74e-08	2.45	0.014*	4.31e-08	3.86e-07
_cons	-.2705898	.121699	-2.22	0.026	-.509115	-.0320641

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model L in which a variable measuring the extent of trade that a petitioner's home country has with the United States is interacted with a variable which measures whether the asylum decision was made before or after the events of 9/11 proves to be statistically significant but with little real impact upon the probability of asylum success. Both before and after 9/11, as the amount of trade increases, the probability of asylum success decreases along the same curve. Any difference in the probability of asylum success tracks the general decrease that has occurred in the years following 9/11.

Figure 8: Model L: Effect on Probability of Asylum Success by 9/11/ Trade Interaction
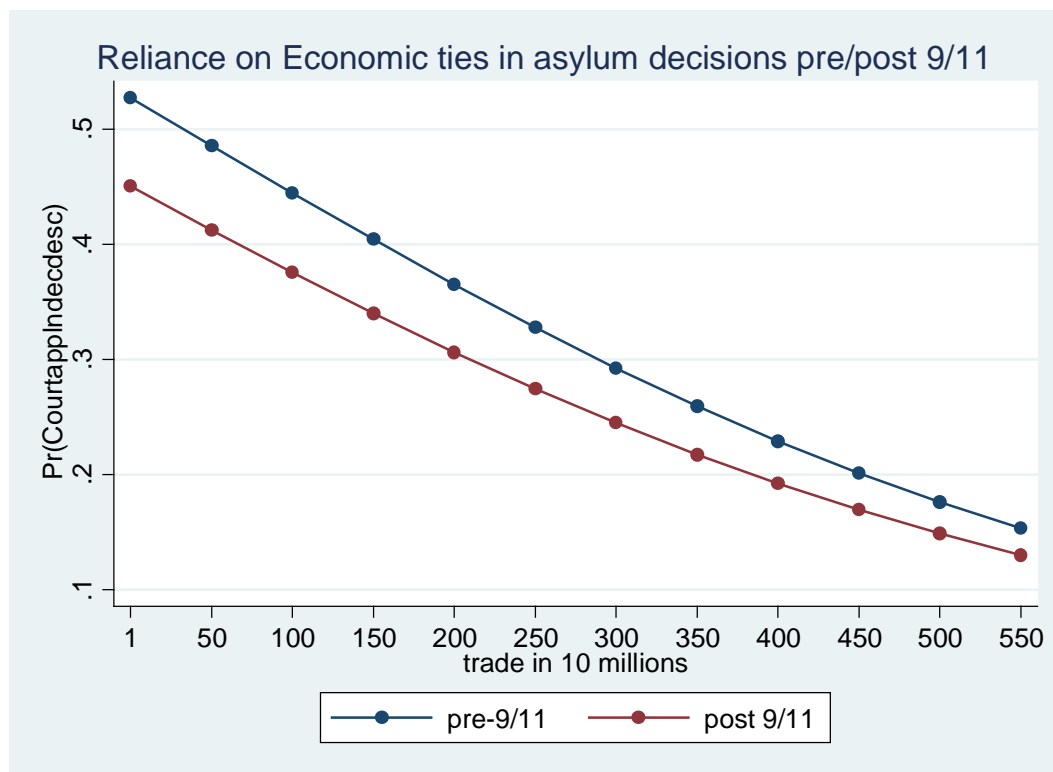
IV. Results for Model M: Interaction of variable measuring whether the petition was brought before or after 9/11 with the variable which measures whether petitioner's country of origin receives military aid from the United States on the probability of success of asylum.

Table 13: Model M: Nine Eleven by Military Aid

Logistic regression

Number of obs = 201674
LR chi2(29) = 32158.57
Prob > chi2 = 0.0000

Log likelihood = -120490.18

Pseudo R2 = 0.1177

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4246806	.0207298	20.49	0.000***	.3840509	.4653103
1.represented	1.098874	.0242255	45.36	0.000***	1.051393	1.146355
asylum1tort~2	-1.95369	.0190115	-102.76	0.000***	-1.99095	-1.91643
timescount	.0004372	.0001086	4.03	0.000***	.0002244	.0006499
congresside~y	-.000512	.0002978	-1.72	0.085	-.001095	.0000713
1.nineelevenn	-.112828	.0340866	-3.31	0.001**	-.179636	-.046019
presidentia~y	.0167671	.017917	0.94	0.349	-.018349	.0518837
humanrights~s	.0293344	.007009	4.19	0.000***	.0155971	.0430718
hearingsenf~t	-.004456	.0021852	-2.04	0.041*	-.008739	-.000173
unemployment	.058878	.0116479	5.05	0.000***	.0360486	.0817074
1.ashcroftr~s	.2900872	.049596	5.85	0.000***	.1928809	.3872936
1.gonzales	-.157378	.0241975	-6.50	0.000***	-.204804	-.109951
1.realid	.3972517	.0238612	16.65	0.000***	.3504846	.4440188
humanrtster~r 2	-.086034	.0473957	-1.82	0.069	-.178927	.0068597
trade	-3.09e-06	5.90e-08	-52.36	0.000***	-3.2e-06	-2.97e-06
1.militaryaid	-.269492	.0205577	-13.11	0.000***	-.309785	-.229200
1.commienoc~e	.6605235	.0134759	49.02	0.000***	.6341112	.6869358
judicialide~y	.1373183	.0090797	15.12	0.000***	.1195225	.1551141
1.gender	.3909562	.0103138	37.91	0.000***	.3707415	.4111709
1.toptenimm~n	-.598199	.0153303	-39.02	0.000***	-.628246	-.568153
totalcase	-5.57e-06	8.14e-07	-6.85	0.000***	-7.1e-06	-3.98e-06
circuitideo~y	-.331465	.0465916	-7.11	0.000***	-.422783	-.240147
i0e1casetype	-.210855	.0181462	-11.62	0.000***	-.246421	-.175289
Border	-.058310	.0130406	-4.47	0.000***	-.083869	-.032751
nineelevenn#/ militaryaid 1 1	-.319236	.022847	-13.97	0.000***	-.364015	-.274456
_cons	-.446281	.1224146	-3.65	0.000	-.686209	-.206353

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model M in which a variable measuring whether the petitioner is from a country that received military aid from the United States is interacted with a variable which measures whether the asylum decision was made before or after the events of 9/11 also proves to be statistically significant. It also proves to have resulted in a sizable marginal effect on the probability of asylum success. Before 9/11, petitioners from countries that received military aid

had 6% less of a probability of asylum success than those whose countries did not receive military aid. After 9/11, petitioners from countries that received military aid were 14% less likely to obtain asylum success than those who were from countries that did not.

Figure 9: Model M: Effect on Probability of Asylum Success by 9/11 Military Aid Interaction

Variables	Pre 9/11	Post 9/11
Military Aid	.44	.34
No Military Aid	.50	.48

V. Results for Model N: Interaction of variable measuring whether the petition was brought before or after 9/11 with the variable which measures whether petitioner's country of origin is one of the top ten producers of fraudulent asylum claims on the probability of success of asylum.

Table 14: Model N: 9/11 by Top Ten Fraud

Logistic regression   Number of obs = 201674

LR chi2(29) = 31996.75
Prob > chi2 = 0.0000
Log likelihood =-120571.1   Pseudo R2 = 0.1171

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.4226345	.0207219	20.40	0.000**	.382020	.4632486
1.represented	1.099066	.0242559	45.31	0.000**	1.05152	1.146606
asylum1tort~2	-1.943154	.0189926	-102.31	0.000**	-1.9803	-1.905929
timescount	.0004284	.0001083	3.96	0.000**	.000216	.0006406
congresside~y	-.0005176	.0002971	-1.74	0.081	-.00109	.0000646
1.nineelevenn	-.3498991	.0334791	-10.45	0.000**	-.41551	-.2842814
presidentia~y	.0102134	.0179511	0.57	0.569	-.02497	.045397
humanrights~s	.0282932	.0069938	4.05	0.000**	.014585	.0420008
hearingsenf~t	-.0047807	.0021853	-2.19	0.029*	-.00906	-.0004977
unemployment	.0563924	.0116466	4.84	0.000**	.033565	.0792193
1.ashcroftr~s	.2820296	.0494529	5.70	0.000**	.185103	.3789556
1.gonzales	-.1569785	.0241245	-6.51	0.000**	-.20426	-.1096954
1.realid	.390593	.0237791	16.43	0.000**	.343986	.4371992
humanrtster~r 2	-.0974611	.0473252	-2.06	0.039*	-.19021	-.0047054
trade	-3.18e-06	5.94e-08	-53.58	0.000**	-3.3e-06	-3.06e-06
1.militaryaid	-.4858728	.0140601	-34.56	0.000**	-.51343	-.4583155
1.commienoc~e	.653583	.0134521	48.59	0.000**	.627217	.6799487
judicialide~y	.1388172	.0090763	15.29	0.000**	.121027	.1566065
1.gender	.3919051	.0103091	38.02	0.000**	.371699	.4121107
1.toptenimm~n	-.6808956	.0203546	-33.45	0.000**	-.72078	-.6410013
totalcase	-5.56e-06	8.14e-07	-6.83	0.000**	-7.1e-06	-3.96e-06

				*		
circuitideo~y	-.318983	.0465724	-6.85	0.000***	-.41026	-.2277028
i0e1casetype	-.2128688	.0181407	-11.73	0.000***	-.24842	-.1773137
Border	-.0573036	.0130391	-4.39	0.000***	-.08285	-.0317475
nineelevenn#/ toptenimmig~n 1 1	.1277091	.022106	5.78	0.000***	.084382	.171036
_cons	-.2550283	.1217253	-2.10	0.036*	-.49360	-.0164511

     * P$\leq$ 0.05   ** P$\leq$ 0.01   ***P$\leq$ 0.001

The results of model N in which a variable measuring whether the petitioner is from a country that produces large numbers of fraudulent asylum claims is interacted with a variable which measures whether the asylum decision was made before or after the events of 9/11 also proves to be statistically significant. The marginal effect of this shift proves to be relatively small. Before 9/11, petitioners from countries that produced large numbers of fraudulent claims had an 8% less of a probability of obtaining asylum than petitioners from other countries. After 9/11, petitioners from countries that produced large numbers of fraudulent claims had 5% less of a probability of success.

Figure 10: Model N: Effect on Probability of Asylum Success by 9/11 / Top-Ten Fraud
            Interaction

Variables	Pre-9/11	Post 9/11
Top Ten Fraud	. .36	.31
Not Top 10 Fraud	. .52	.44

Discussion

The results of these models confirm my hypotheses regarding how the events of 9/11 changed how immigration judges made their decisions. After 9/11, immigration judges placed less emphasis on the human rights records of petitioners' home countries in making their decisions than before. As immigration judges relied less upon human rights concerns in making

their decisions following 9/11, they relied more heavily on political variables.

However, while all of the interaction effects were statistically significant, only some had substantively meaningful effects. Only two interactions, the one interacting the 9/11 variable and the variable measuring human rights record of the petitioner's home country and the one interacting 9/11 with the variable measuring whether the petitioner is from a country that receives military aid from the United States, had substantial marginal effects. The remainder while being statistically significant were not substantial.

The effect of 9/11 on how immigration judges respond to petitioner's from countries with the worst human rights records does appear to reveal a shift in how immigration judges were making decisions. One would assume that petitioners from countries with the worst human rights records would have the greatest probability of success. However, after 9/11, immigration judges were less likely to grant asylum to petitioners from countries that received a score of 5 than of those that received a 4. One could imagine that one cause of this is that as the events of 9/11 shifted immigration judge's focus towards more political aspects of the asylum process, that focus showed up as a lower probability of asylum success for persons fleeing the worst human rights violations.

Table 16 lists how the marginal effects that were the largest in the original multi-institutional model changed under the models used to examine the 9/11 interaction effects.

Table 15: Comparison of Marginal Effects Of Most Significant Variables Between Interaction
Models J-N And The Basic Multi-Institutional Model

Variables	Model C Original Multi-Institutional Model	Model J 9/11 by human rts. score	Model K 9/11 by Communist/Non-Communist	Model L 9/11 by Trade	Model M 9/11 by Military Aid	Model N 9/11 by Top Ten Fraud
Immigration Ct. Mean	.2234	.302	.304	.302	.304	.302
Immigration Judge ID	.0992	.102	.101	.102	.101	.101
9/11 Dummy	-.0992	-.082	-.078	-.069	-.079	-.070
Human rts/Terror	.1305	.123	.105	.107	.108	.108
Trade	-.3166	-.352	-.353	-.356	-.357	-.357
Military Aid	-.1337	-.114	-.118	-.116	-.118	-.117

These findings are consistent with previous studies which have examined how judges change their behavior during periods when the United States is engaged in conflict. (Fix and Randoazzo, 2010). It has been shown that during times of conflict, judges are more likely to show deference to the executive branch. When immigration judges placed more weight upon political factors in making asylum decisions they were in effect showing deference to the concerns of the executive branch. Following 9/11, the executive branch placed even more emphasis on using the asylum process for political ends. It appears that immigration judges responded in the same manner as Supreme Court justices. This is the first study to find such an effect on judges at the trial level.

This is also the first study to examine how the events of 9/11 changed the manner in which immigration judges make their decisions on asylum issues. The findings go beyond showing that judges granted asylum at a lower rate following 9/11. Rather they reveal that the calculus that judges relied upon in their decision making process changed. Judges generally relied more on political ties, or lack thereof, following the attacks. This shift back to a more cold war approach to the asylum process reveals a responsiveness to administrative as well as public fears that has been significant and lasting.

The results of these models provide a valuable addition to the literature regarding judicial behavior during times of conflict. In making decisions to grant or deny asylum, immigration judges are in the unique position of making decisions every-day that have foreign policy considerations. They are perhaps the only trial judges who are so often faced with making decisions that have these types of implications. This research shows that judges at every level are susceptible to changes in behavior when the country is facing conflict.

CHAPTER IX - EXAMINING IMMIGRATION JUDGE
BEHAVIOR BY JUDGE TYPE

The results of the models in chapters Seven and Eight show us that immigration judges

act differently depending upon how the public and Congress viewed issues related to

immigration at the time that the judges made their decisions as well as before and after the events

of 9/11. This chapter examines the interaction of judicial ideology with a number of variables. It

first builds upon a number of judicial and bureaucratic studies which examined the role of case

load on how judges and bureaucrats exercise discretion. Previous work such as Taylor & Kelly

(2006) has found that as case load increases, judges and bureaucrats are less likely to follow

formal rules and more likely to make decisions based upon their own personal preferences. In

order to determine whether immigration judges behave similarly when faced with high case

loads, I created an additional variable which places judges into one of three categories broadly

based upon their judicial ideology scores. Those immigration judges with backgrounds which

suggest that they were the most conservative were placed into one category, those that have

backgrounds that were the most liberal were placed in another category. Judges whose

backgrounds did not include strong indicators of a conservative or liberal bent were placed into a

third category. I hypothesize that as case load increases judges will be more likely to exercise

their discretion in a manner in keeping with their own ideologies. I hypothesize that as case load

increases Conservative judges, who are more likely to favor law and order issues, are less likely

to grant asylum. I also hypothesize that when case load increases for liberal judges, who are

more likely to support issues related to human rights concerns, the judges will be more likely to

grant asylum. As to the third group, judges that are neither liberal nor conservative, I hypothesize

that case load will have little or no effect upon the rate at which the judges grant asylum.

This chapter also examines whether categories of judges respond differently to variables set forth in the multi-institutional model set forth in chapter 5. Building upon the work of Keith Holmes & Miller (2013 & 2014) I examine the extent that liberal judges respond differently to certain characteristics of asylum applicants than conservative judges. Keith Holmes & Miller argue that the difference between the behavior of liberal and conservative judges lies primarily in how they interpret "legally relevant" and "legally irrelevant" facts concerning an asylum applicant's case. "legally relevant" facts about an applicant's case are largely the human rights record of the petitioner's country of origin. "Legally irrelevant" facts are all of the political, economic and social variables that have been addressed in previous chapters. They found that liberal judges will focus on some "irrelevant" facts while conservative judges will focus on other "irrelevant" facts in making decisions to grant or deny asylum. My multi-Institutional model departs from their work in that, as I have shown in chapters Six and Eight, the focus on what types of facts that immigration judges focus on is in large part a function of political pressure placed upon them from the executive, Congress and the judiciary. As discussed in previous chapters, the ability of immigration judges to act in accordance with their own policy preferences are often constrained by influence from the executive, Congress and the judiciary. In this chapter I intend to examine the findings of Keith Holmes & Miller in the context of my multi-institutional model. Like them, I hypothesize that immigration judges with different ideologies will respond differently to political and human rights characteristics of the petitioner's home country.

However, I expand upon their work to include factors that may influence the behavior of immigration judges as members of the federal bureaucracy. As such, I hypothesize that liberal judges will respond differently to changes in Congressional ideology, ideology in circuit courts,

the executive and amongst the judges who preside in the same court than conservative judges. I also hypothesize that immigration judges with different ideologies will respond differently to the level and type of attention Congress plays towards immigration issues.

My hypotheses are a shift from a purely rational choice approach to the understanding of judicial behavior. This is in large part a function of the unique circumstances that immigration judges face in making decisions regarding asylum applicants. Decisions to grant or deny asylum might on their face first appear to be based upon traditional assumptions about the behavior of liberal or conservative judges. It is assumed that liberal judges will grant asylum at a greater rate than conservative judges. These assumptions are based upon findings throughout the literature which show that conservative judges tend to be less likely to side with petitioners or defendants than liberal judges in a wide range of cases. In general, this is true in asylum cases as well. Judicial ideology does have a significant impact upon a petitioner's chance of obtaining asylum. The first model I examine in this chapter considers how case load affects the probability of immigration judges to grant asylum. I hypothesize, that as case load increases, the role of ideology in asylum decisions also increases.

However, the dual nature of the asylum process, in that it serves both political and human rights goals, complicates this issue. Since decisions to grant asylum often have political ramifications, it might often be the case that a decision to grant asylum is in keeping with the goals of a conservative judge. If a petitioner is seeking asylum from a country that is an ideological enemy of the United States, would a decision to grant asylum be a liberal one? What about cases that involve allegations of religious persecution by a liberal democratic ally of the United States such as the situation presented in the Romeike's case?

One might argue that rational choice based models do not provide a good fit in such situations. I argue, however, that rational choice is still appropriate with only a relatively small alteration. Rather than assuming that all judges will generally respond to the same stimuli in a similar manner, I hypothesize that liberal judges will generally respond to the same stimuli similarly, moderate judges will respond in the same way as moderate judges and conservative judges will respond in the same way as conservative judges. Building upon assumptions based upon the backgrounds of judges one can then form and test assumptions about how each judge type responds to changes in social, economic and political variables.

Central to these hypotheses is the belief that immigration judges will respond to political economic and social variables differently based upon their ideology. For example, I hypothesize that faced with a conservative president and a conservative Congress, liberal judges will respond differently than conservative judges. Liberal judges will respond by taking their role as protectors of human rights more seriously, while conservative judges will be more likely to place more emphasis on the political aspects of a particular asylum decision.

Case Load

A number of studies of street level bureaucrats have revealed that work load plays a part in the exercise of discretion. High case-loads have been shown to increase the role played by bureaucrats' personal preferences in making decisions to provide services. (Prottas, 1979) When work load is high, street level bureaucrats are more likely to ignore agency policy and make decisions based upon their own preferences. (Taylor & Kelly, 2006) By measuring the total case load handled by each immigration court, and comparing it to the ideology score of the immigration judge making the decision, I hope to be able to gauge the role of work load on the exercise of personal discretion. I hypothesize that as workload increases, liberal judges will be

142

more likely to grant asylum and conservative judges will be less likely.

Hypothesis #1: The likelihood that an Immigration Judge will follow his/her individual policy preferences for the grant or denial of asylum will increase the larger the case load assigned to the immigration judge.

Institutional Ideology

A number of studies have shown that people with different ideological backgrounds respond differently to the same stimuli. Randazzo, Waterman and Fine (2006) found that liberal judges responded differently to federal legislation than conservative judges. In examining legislation designed to constrain judicial behavior, they found that judges appointed by Democrats were constrained by statutes concerning criminal cases, while Republican appointed judges were constrained by statutes regarding civil rights. In the context of this study, I hypothesize that liberal immigration judges will be more strongly influenced, and more likely to grant asylum, by the liberal leanings of Congress, the executive and the other members of their own immigration court than conservative judges. I also believe that that converse will also be true in that conservative judges will be more influenced by conservative leanings of these dame institutions and thus less likely to grant asylum.

Hypothesis #2: As the ideology of the executive branch becomes more conservative, the probability that conservative immigration judges will deny asylum will increase to a greater extent than the probability of liberal immigration judges denying asylum

Hypothesis #3: As the ideology of Congress becomes more conservative, the probability that conservative immigration judges will deny asylum will increase to a greater extent than the probability of liberal immigration judges denying asylum

Hypothesis #4: As the mean ideology of immigration court on which they sit becomes more conservative, the probability that conservative immigration judges will deny asylum will increase to a greater extent than the probability of liberal immigration judges denying asylum

Hypothesis #6: As the ideology of the executive branch becomes more liberal, the probability that liberal immigration judges will grant asylum will increase to a greater extent than the probability of conservative immigration judges granting asylum

Hypothesis #7: As the ideology of Congress becomes more liberal, the probability that liberal immigration judges will grant asylum will increase to a greater extent than the probability of conservative immigration judges granting asylum

Hypothesis #8: As the mean ideology of the immigration court on which they sit becomes more liberal, the probability that liberal immigration judges will grant asylum will increase to a greater extent than the probability of conservative immigration judges granting asylum

Additionally, I hypothesize that conservative and liberal judges will respond differently to

the political and human rights aspects of the asylum process. As conservative judges are

more likely to envision asylum as a law enforcement issue, it is more likely that they will

place more emphasis on the political factors that influence asylum decisions. Liberal

judges, who tend to be more concerned with the human rights implications of asylum will

be more likely to emphasize human rights concerns. I further hypothesize that during times

with increased Congressional attention towards enforcement issues, the probability that a

conservative judge will grant asylum will decrease at a greater rate than the probability that

a moderate or liberal judge will grant asylum. During times of increased Congressional

attention on human rights issues, I argue that the probability of liberal judges granting

asylum will increase to a greater extent than moderate or conservative judges.

Hypothesis #9: Conservative judges will place more weight on political factors in making decisions to grant or deny asylum than liberal judges

Hypothesis #10:. Liberal judges will place more weight on human rights factors in making decisions to grant asylum than conservative judges

Hypothesis #11:. During periods of increased Congressional attention towards enforcement related immigration issues, the probability that conservative judges will grant asylum will

decrease at a greater rate than moderate or liberal judges.

Hypothesis #12:. During periods of increased Congressional attention towards human rights related immigration issues, the probability that liberal judges judges will grant asylum will increase at a greater rate than moderate or conservative judges.

Models

This chapter examines a number of models each of which are built upon the multi-institutional model outlined in chapter Six. All of the models examine a dichotomous independent variable which is scored as 0, if a petitioner is denied asylum and a 1 if granted asylum. Each model is examined through logistic regression through the use of the LOGIT command in STATA. In total there are 12 models examined in this chapter, labeled O to Y.

Model O, examines the interaction of a variable that measures whether a petitioner's case was decided by a judge who was one of three judicial types and a variable that measures overall case load for the immigration court. I chose to measure overall case, rather than just asylum cases because I believed that it provided a more accurate approximation of how busy the immigration judges were.

Model P examines an interaction between the judicial ideology type variable and a variable that measures the ideology of the president at the time the case was decided. Model Q examines an interaction between the judicial ideology type variable and a variable that measures the mean ideology of Congress at the time the case was decided. Model R examines an interaction between the judicial ideology type variable and a variable that measures the mean ideology of the immigration court that the deciding judge sat on at the time the case was decided.

Model S examines the interaction between the judicial ideology type variable and

the weight immigration judges place on whether the United States provides military aid to a petitioner's country of origin. Model T examines the interaction between the judicial ideology type variable and the weight immigration judges place on whether a petitioner is from a current or former communist country. Model U examines the interaction between the judicial ideology type variable and the weight immigration judges place on the extent of trade a petitioner's home country has with the United States. Model V examines the interaction between the judicial ideology type variable and the weight immigration judges place on whether a petitioner is from a country that is one of the top ten in producing fraudulent claims for asylum in the United States. Model W examines the interaction between the judicial ideology type variable and the weight immigration judges place on the human rights record of the petitioner's country of origin.

Models X and Y examine interactions between judicial ideology type and the number and types of Congressional hearings being held in that particular year. Model X looks at the interaction between judicial ideology type and a variable measuring the number of enforcement related immigration hearings held by Congress in the year that the petitioner applied for asylum. Model Y looks at the interaction between judicial ideology type and a variable measuring the number of human rights related immigration hearings held by Congress in the year that the petitioner applied for asylum.

Results

Results for Model O: Interaction of Judicial Type and the total number of cases in a particular immigration court on probability of asylum success

Table 16: Model O: Judicial Type by Total Case

Logistic regression

Number of obs = 201674
LR chi2(31) = 32734.49
Prob > chi2 = 0.0000

Log likelihood = -120202.22

Pseudo R2 = 0.1198

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.531319	.0220386	24.11	0.000***	.4881242	.5745138
represented	1.091415	.0242494	45.01	0.000***	1.043887	1.138943
asylum1tort~2	-1.92607	.0186411	-103.32	0.000***	-1.96261	-1.88954
timescount	.0004291	.0001085	3.96	0.000***	.0002165	.0006418
congresside~y	-.000513	.0002964	-1.73	. 0.083	-.001094	.0000676
nineelevenn	-.309644	.0318076	-9.73	0.000***	-.371986	-.247303
presidentia~y	.005384	.0179681	0.30	. 0.764	-.029832	.0406008
humanrights~s	.0301208	.0070092	4.30	0.000***	.0163829	.0438586
hearingsenf~t	-.003594	.0021902	-1.64	. 0.101	-.007887	.000698
unemployment	.0648528	.0116673	5.56	0.000***	.0419853	.0877202
ashcroftrev~s	.2837302	.0495645	5.72	0.000***	.1865857	.3808748
gonzales	-.183327	.0244844	-7.49	0.000***	-.231316	-.135338
realid	.4021223	.0238694	16.85	0.000***	.3553391	.4489055
humanrtster~r 2	-.102374	.0473949	-2.16	. 0.031*	-.195267	-.009482
trade	-3.13e-06	5.88e-08	-53.24	0.000***	-3.2e-06	-3.01e-06
1.militaryaid	-.468691	.014045	-33.37	0.000***	-.496219	-.441164
1.commienoc~e	.6527529	.0134705	48.46	0.000***	.6263512	.6791546
judicialide~y	-.223851	.0180359	-12.41	0.000***	-.259201	-.188501
gender	.392734	.0103273	38.03	0.000***	.3724928	.4129752
1.toptenimm~n	-.601200	.0153394	-39.19	0.000***	-.631264	-.571135
totalcase	-.000016	1.11e-06	-14.63	0.000***	-.000018	-.000014
circuitideo~y	-.246715	.0468129	-5.27	0.000***	-.338467	-.154964
i0e1casetype	-.195911	.0182013	-10.76	0.000***	-.231585	-.160237
Border	.0003444	.0134259	0.03	0.980	-.025969	.0266586
threeID 2	-.030048	.0301965	-1.00	0.320	-.089232	.0291355
threeID#/ c.totalcase 2	.0000147	1.77e-06	8.32	0.000***	.0000112	.0000182
threeID#/ c.totalcase 3	.0000409	1.94e-06	21.07	0.000***	.0000371	.0000447
_cons	-.212524	.1219591	-1.74	. 0.081	-.451559	.0265114

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results from model O, in which the judicial ideology type variable is interacted

with the amount of cases handled in the immigration court in which the judge presides during the year that the case was decided shows a significant interaction. For all three judicial ideology types, conservative, moderate and liberal, the difference in grant rates is very small in the courts that have small numbers of cases. However as the number of cases increases to the encompass the busiest courts, the difference is profound. In the busiest courts, the difference between the probability of asylum success between liberal and conservative judges is 28%. That means that in the busiest courts liberal judges are 28% more likely to grant asylum than conservative judges. Over the same range of court caseloads, moderate judges see only a 3% change in probability of asylum success.

Figure 11: Model O: Effect on Probability of Asylum Success by Judge Type/ Total Case Interaction

Effect of Total Cases on Probability of Asylum by Judge Type

Results for Model P: Interaction of Judicial Type and presidential ideology on probability of asylum success.

Table 17: Model P: Judicial Type by Presidential Ideology

Logistic regression

Number of obs = 201674
LR chi2(31) = 32316.46
Prob > chi2 = 0.0000

Log likelihood = -120411.24

Pseudo R2 = 0.1183

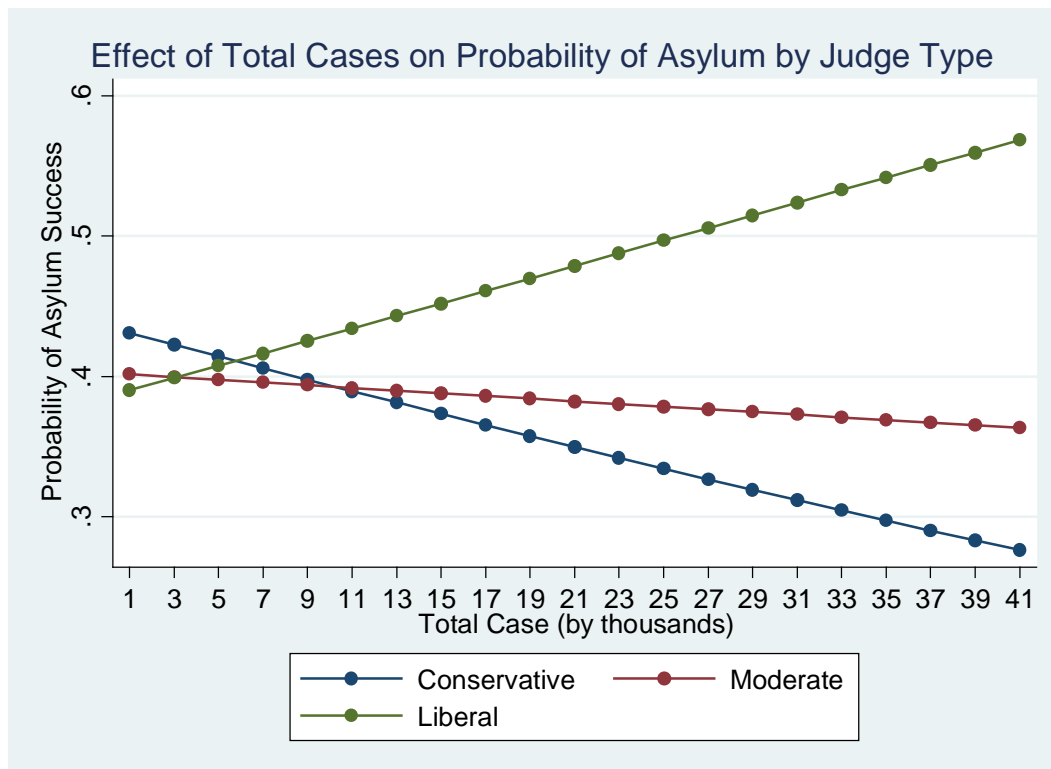| courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3878707	.0208997	18.56	0.000	.3469081	.4288332
represented	1.095891	.0242547	45.18	0.000	1.048353	1.14343
asylum1tort~2	-1.91789	.0186165	-103.02	0.000	-1.954378	-1.881402
timescount	.0004214	.0001084	3.89	0.000	.0002089	.0006338
congresside~y	-.000517	.000298	-1.73	0.083	-.001101	.0000671
nineelevenn	-.3019069	.0317656	-9.50	0.000	-.3641663	-.2396476
presidentia~y	-.0542214	.020964	-2.59	0.010	-.0953102	-.0131327
humanrights~s	.0294634	.007003	4.21	0.000	.0157377	.0431892
hearingsenf~t	-.0034994	.0021895	-1.60	0.110	-.0077908	.0007919
unemployment	.0571601	.0116539	4.90	0.000	.0343188	.0800014
ashcroftrev~s	.2838287	.0495175	5.73	0.000	.1867762	.3808812
gonzales	-.1956046	.0246795	-7.93	0.000	-.2439756	-.1472337
realid	.4046664	.0238752	16.95	0.000	.3578719	.451461
humanrtster~r 2	-.100157	.0473678	-2.11	0.034	-.1929962	-.0073178
trade	-3.11e-06	5.87e-08	-52.96	0.000	-3.22e-06	-2.99e-06
1.militaryaid	-.4803803	.0140293	-34.24	0.000	-.5078772	-.4528834
1.commienoc~e	.6540924	.0134625	48.59	0.000	.6277063	.6804784
judicialide~y	-.1219282	.0172966	-7.05	0.000	-.1558289	-.0880276
gender	.3928979	.0103194	38.07	0.000	.3726722	.4131235
1.toptenimm~n	-.6015331	.0153254	-39.25	0.000	-.6315703	-.571496
totalcase	-2.92e-06	8.27e-07	-3.54	0.000	-4.54e-06	-1.30e-06
circuitideo~y	-.247774	.0467214	-5.30	0.000	-.3393463	-.1562017
i0e1casetype	-.2194653	.0181633	-12.08	0.000	-.2550646	-.183866
Border	-.0545181	.0131049	-4.16	0.000	-.0802032	-.0288331
threeID 2	-.0367853	.0390118	-0.94	0.346	-.113247	.0396764
threeID#/ c. presidentia~y 2	.1161857	.0245208	4.74	0.000	.0681258	.1642457
threeID#/c. presidentia~y 3	.1118271	.0249581	4.48	0.000	.0629101	.1607441
_cons	-.1513091	.1227258	-1.23	0.218	-.3918472	.089229

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results from model P, in which the judicial ideology type variable is interacted with

the ideology score of whomever was president during the year that the case was decided shows a significant interaction. For both liberal and moderate judges, as presidential ideology becomes more conservative, the probability of asylum success actually increases. This increase in probability is relatively minor for judges in both the liberal and moderate groups. (A total of 1.2% for liberal judges and 3.5% for moderate judges.) Judges in the conservative group saw a reduction in the probability of granting asylum as presidential ideology becomes more conservative. The total reduction in probability for conservative judges over the course of presidential ideologies present in the sample was 2.2%.

Figure 12: Model P: Effect on Probability of Asylum Success by Judge Type/ Presidential Ideology Interaction
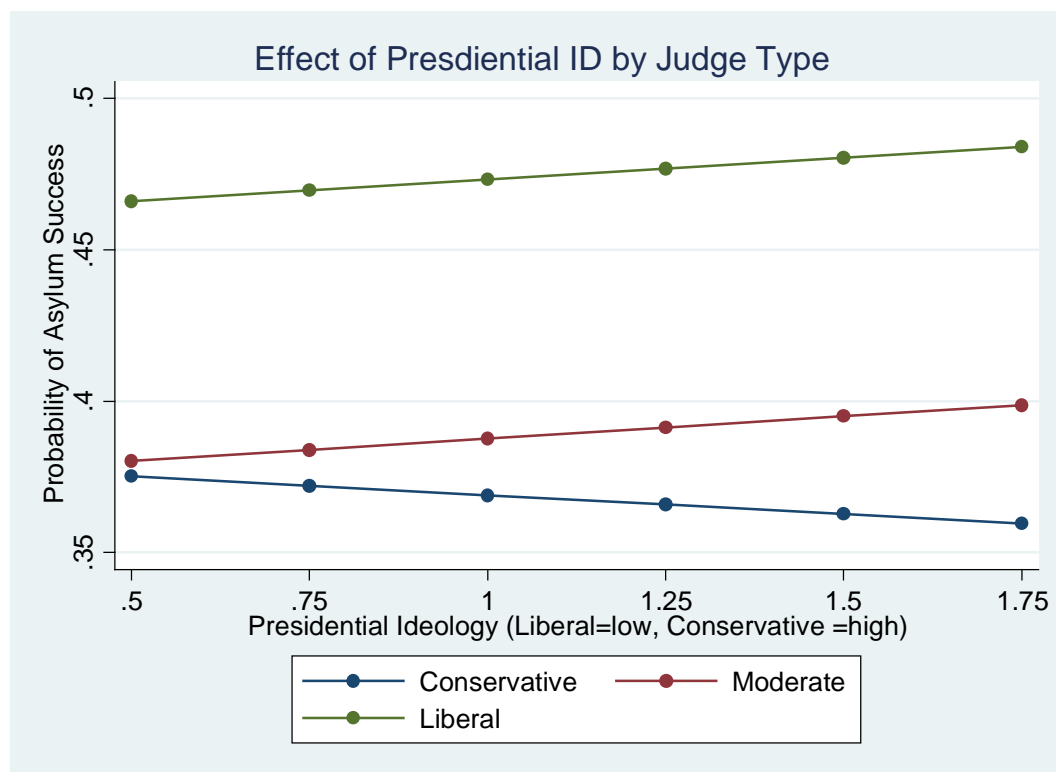
Results for Model Q: Interaction of Judicial Type and Congressional ideology on probability of asylum success.

Table 18: Model Q: Judicial Type by Congressional Ideology

Logistic regression

Number of obs = 201674
LR chi2(31) = 32287.52
Prob > chi2 = 0.0000

Log likelihood = -120425.71

Pseudo R2 = 0.1182

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3845002	.0208876	18.41	0.000	.3435613	.425439
represented	1.092521	.0242492	45.05	0.000	1.044993	1.140048
asylum1tort~2	-1.918347	.0186176	-103.04	0.000	-1.954837	-1.881857
timescount	.0004225	.0001083	3.90	0.000	.0002101	.0006348
congresside~y	-.0001862	.0003864	-0.48	0.630	-.0009435	.0005712
nineelevenn	-.3025926	.0317636	-9.53	0.000	-.3648481	-.2403371
presidentia~y	.0061695	.0179484	0.34	0.731	-.0290087	.0413477
humanrights~s	.0293908	.0070011	4.20	0.000	.015669	.0431127
hearingsenf~t	-.0039602	.0021883	-1.81	0.070	-.0082492	.0003287
unemployment	.0591249	.0116539	5.07	0.000	.0362836	.0819661
ashcroftrev~s	.2832063	.0494976	5.72	0.000	.1861928	.3802198
gonzales	-.1768459	.0244365	-7.24	0.000	-.2247405	-.1289512
realid	.3970062	.0238267	16.66	0.000	.3503067	.4437056
humanrtster~r 2	-.1010634	.0473621	-2.13	0.033	-.1938914	-.0082353
trade	-3.11e-06	5.87e-08	-53.00	0.000	-3.23e-06	-3.00e-06
1.militaryaid	-.480143	.0140263	-34.23	0.000	-.5076341	-.4526519
1.commienoc~e	.6541852	.0134586	48.61	0.000	.6278069	.6805635
judicialide~y	-.120921	.0172951	-6.99	0.000	-.1548188	-.0870233
gender	.3943182	.0103143	38.23	0.000	.3741026	.4145338
1.toptenimm~n	-.6020523	.0153262	-39.28	0.000	-.6320911	-.5720135
totalcase	-2.92e-06	8.27e-07	-3.54	0.000	-4.55e-06	-1.30e-06
circuitideo~y	-.2506888	.0467151	-5.37	0.000	-.3422487	-.159129
i0e1casetype	-.2168545	.018158	-11.94	0.000	-.2524435	-.1812655
Border	-.0546401	.0131038	-4.17	0.000	-.0803232	-.028957
threeID 2	.1326389	.0159376	8.32	0.000	.1014017	.1638761
threeID# c./ congresside~y 2	-.0009588	.0007208	-1.33	0.183	-.0023716	.000454
threeID# c./ congresside~y 3	-.0004414	.0007288	-0.61	0.545	-.0018697	.0009869
_cons	-.2376843	.1217522	-1.95	0.051	-.4763143	.0009456

* P≤ 0.05   ** P≤ 0.01   ***P≤ 0.001

The results of model Q which examined an interaction between the judicial ideology type

variable and a variable that measures the mean ideology of Congress at the time the case was

decided shows a significant interaction. There was no significant interaction between

Congressional ideology and the probability of asylum success for judges in the moderate and

liberal groups. However, for judges in the conservative group there was a 26% reduction in

probability between cases decided during years with the most liberal and most conservative

congressional terms.

Figure 13: Model Q: Effect on Probability of Asylum Success by Judge Type/ Congressional
Ideology Interaction

Results for Model R: Interaction of Judicial Type and mean immigration court ideology on probability of asylum success.

Table 19: Model R: Judicial Type by Mean Ideology

Logistic regression

Number of obs = 201674
LR chi2(31) = 32841.97
Prob > chi2 = 0.0000

Log likelihood = -120148.49

Pseudo R2 = 0.1202

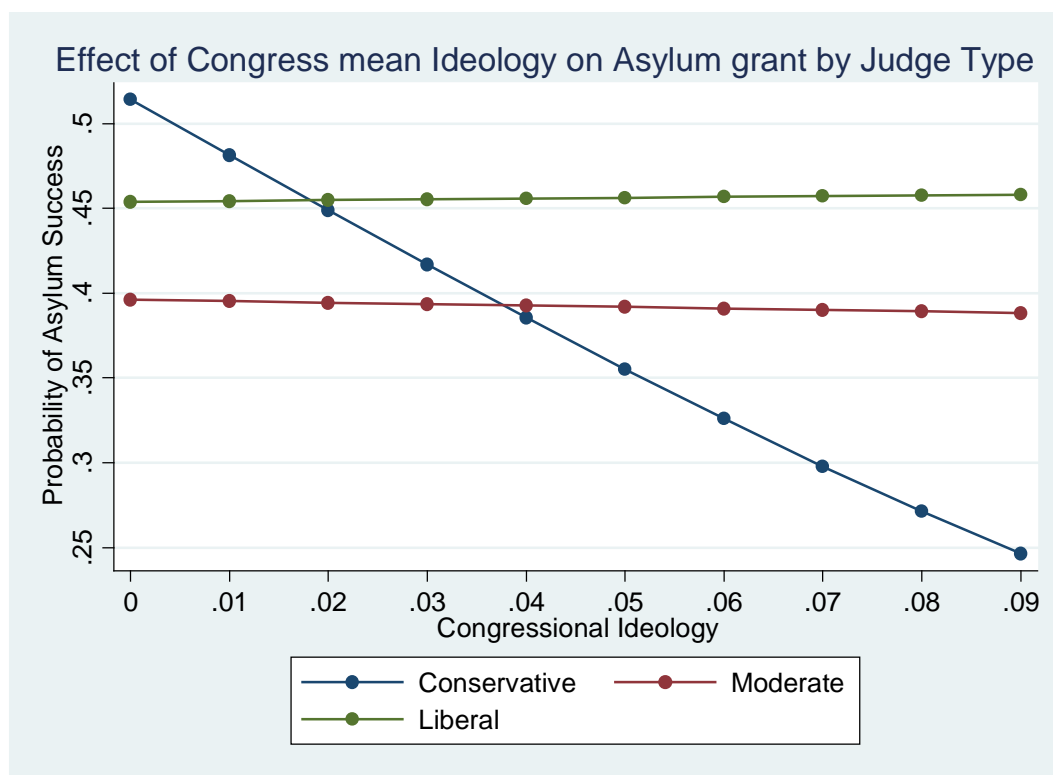| courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.0377031	.0259532	1.45	0.146	-.0131642	.0885703
represented	1.102635	.0242719	45.43	0.000	1.055063	1.150207
asylum1tort~2	-1.92566	.0186259	-103.3	0.000	-1.962171	-1.889159
timescount	.000395	.0001086	3.64	0.000	.0001823	.0006078
congresside~y	-.000483	.0002998	-1.61	0.107	-.0010706	.0001047
nineelevenn	-.303361	.0318354	-9.53	0.000	-.3657572	-.2409649
presidentia~y	.0151321	.0179845	0.84	0.400	-.0201169	.0503812
humanrights~s	.0316019	.0070139	4.51	0.000	.0178549	.045349
hearingsenf~t	-.004012	.0021903	-1.83	0.067	-.008305	.0002808
unemployment	.0598675	.0116701	5.13	0.000	.0369944	.0827405
ashcroftrev~s	.2703414	.0496013	5.45	0.000	.1731245	.3675582
gonzales	-.1648344	.0244676	-6.74	0.000	-.2127901	-.1168787
realid	.3935243	.0238422	16.51	0.000	.3467943	.4402542
humanrtster~r 2	-.1047543	.0474183	-2.21	0.027	-.1976926	-.0118161
trade	-3.13e-06	5.88e-08	-53.33	0.000	-3.25e-06	-3.02e-06
1.militaryaid	-.4737815	.0140454	-33.73	0.000	-.50131	-.4462531
1.commienoc~e	.6532837	.0134751	48.48	0.000	.6268731	.6796944
judicialide~y	-.1234522	.0173654	-7.11	0.000	-.1574878	-.0894166
gender	.3922367	.0103352	37.95	0.000	.3719801	.4124932
1.toptenimm~n	-.5962341	.015349	-38.85	0.000	-.6263176	-.5661507
totalcase	-1.48e-06	8.34e-07	-1.78	0.076	-3.12e-06	1.52e-07
circuitideo~y	-.2752724	.0470217	-5.85	0.000	-.3674332	-.1831116
i0e1casetype	-.1996494	.0182035	-10.97	0.000	-.2353276	-.1639711
Border	-.0091187	.0133144	-0.68	0.493	-.0352144	.0169771
threeID 2	-.9237748	.0550571	-16.78	0.000	-1.031685	-.8158649
threeID/c. mean5 2	.958112	.046577	20.57	0.000	.8668228	1.049401
threeID/c. mean5 3	.7393478	.0441711	16.74	0.000	.6527741	.8259215
_cons	.0767558	.1230956	0.62	0.533	-.1645071	.3180186

The results of model R, where the interaction between the judicial ideology type variable and a variable that measures the mean ideology of the immigration court that the deciding judge

153

sat on at the time the case was decided proved to be significant. As the mean ideology of the

other judges on a judge's immigration court becomes more liberal, the probability of asylum

success increases from 20% to 80% over the range of immigration court ideology. The

probability of success for cases brought before conservative judges does not significantly change

across the range of mean court ideology.

Figure 14: Model R: Effect on Probability of Asylum Success by Judge Type/ Mean Immigration
Court Ideology Interaction

Results for Model S: Interaction of Judicial Type and variable measuring whether country of origin received military aid from the United States on probability of asylum success.

Table 20: Model S: Judicial Type by Military ID

Logistic regression

Number of obs = 201674
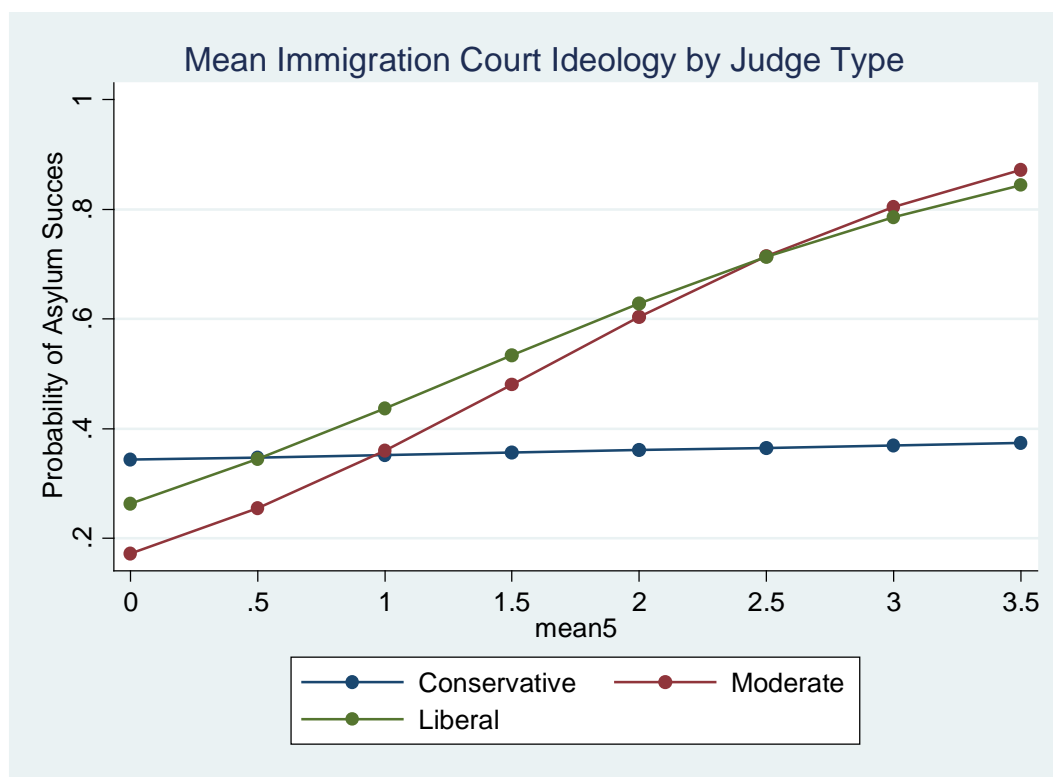LR chi2(31) = 32292.73
Prob > chi2 = 0.0000

Log likelihood = -120423.11

Pseudo R2 = 0.1182

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3869087	.0209102	18.50	0.000	.3459254	.427892
represented	1.092259	.0242485	45.04	0.000	1.044733	1.139786
asylum1tort~2	-1.91905	.0186198	-103.07	0.000	-1.95554	-1.88255
timescount	.0004227	.0001083	3.90	0.000	.0002104	.0006351
congresside~y	-.000522	.0002991	-1.75	0.080	-.001109	.0000633
nineelevenn	-.301635	.0317654	-9.50	0.000	-.363894	-.239376
presidentia~y	.0056963	.0179483	0.32	0.751	-.029481	.0408744
humanrights~s	.0292423	.0070004	4.18	0.000	.0155218	.0429628
hearingsenf~t	-.004037	.0021886	-1.84	0.065	-.008326	.0002524
unemployment	.0587487	.0116541	5.04	0.000	.0359071	.0815904
ashcroftrev~s	.2835835	.0494962	5.73	0.000	.1865727	.3805943
gonzales	-.176466	.0244404	-7.22	0.000	-.224369	-.128564
realid	.397188	.0238277	16.67	0.000	.3504866	.4438895
humanrtster~r 2	-.099863	.0473645	-2.11	0.035	-.192696	-.007031
trade	-3.11e-06	5.87e-08	-52.97	0.000	-3.22e-06	-2.99e-06
1.militaryaid	-.479409	.0175148	-27.37	0.000	-.513738	-.445081
1.commienoc~e	.6536304	.0134648	48.54	0.000	.6272398	.680021
judicialide~y	-.121683	.0173095	-7.03	0.000	-.155609	-.087757
gender	.3944468	.0103204	38.22	0.000	.3742191	.4146744
1.toptenimm~n	-.603809	.0153422	-39.36	0.000	-.633879	-.573739
totalcase	-3.02e-06	8.29e-07	-3.64	0.000	-4.64e-06	-1.39e-06
circuitideo~y	-.253640	.0467294	-5.43	0.000	-.345228	-.162052
i0e1casetype	-.216589	.0181577	-11.93	0.000	-.252177	-.181000
Border	-.054977	.0131239	-4.19	0.000	-.080699	-.029254
threeID 2	.1091945	.0231872	4.71	0.000	.0637484	.1546406
threeID#/militaryaid 2 1	.0355451	.0253514	1.40	0.161	-.014142	.085233
threeID#/militaryaid 3 1	-.040966	.0253202	-1.62	0.106	-.090592	.0086605
_cons	-.232396	.121946	-1.91	0.057	-.471406	.0066133

The results of model S which examined the interaction between the judicial ideology type variable and the weight immigration judges place on whether the United States provides military aid to a petitioner's country of origin was not significant.

Results for Model T: Interaction of Judicial Type and variable measuring whether country of origin was a communist state on probability of asylum success.

Table 21: Model T: Judicial Type by Communist

Logistic regression

Number of obs = 201674
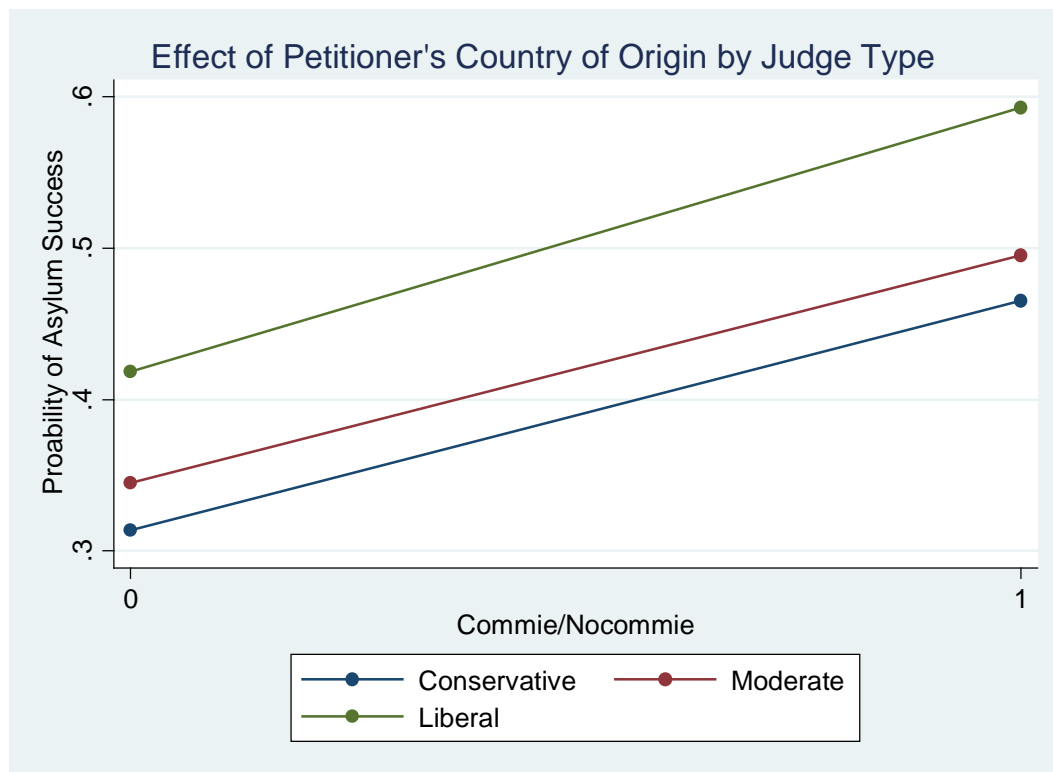LR chi2(31) = 32295.20
Prob > chi2 = 0.0000
Log likelihood = -120421.87   Pseudo R2 = 0.1182

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3873126	.0209124	18.52	0.000	.346325	.4283002
represented	1.092194	.0242484	45.04	0.000	1.044668	1.13972
asylum1tort~2	-1.920258	.0186267	-103.09	0.000	-1.956765	-1.88375
timescount	.0004231	.0001083	3.91	0.000	.0002107	.0006354
congresside~y	-.0005229	.0002993	-1.75	0.081	-.0011095	.0000637
nineelevenn	-.3021213	.0317652	-9.51	0.000	-.36438	-.2398626
presidentia~y	.0055761	.0179511	0.31	0.756	-.0296073	.0407595
humanrights~s	.0292351	.0070003	4.18	0.000	.0155149	.0429554
hearingsenf~t	-.0040273	.0021884	-1.84	0.066	-.0083164	.0002618
unemployment	.0588633	.0116545	5.05	0.000	.036021	.0817056
ashcroftrev~s	.2836055	.0494979	5.73	0.000	.1865914	.3806196
gonzales	-.1763058	.0244541	-7.21	0.000	-.224235	-.1283766
realid	.396678	.023828	16.65	0.000	.3499759	.44338
humanrtster~r 2	-.1005431	.0473522	-2.12	0.034	-.1933517	-.0077346
trade	-3.11e-06	5.87e-08	-53.02	0.000	-3.23e-06	-3.00e-06
1.militaryaid	-.4795304	.0140303	-34.18	0.000	-.5070293	-.4520315
1.commienoc~e	.6443813	.016943	38.03	0.000	.6111737	.677589
judicialide~y	-.1215273	.0173163	-7.02	0.000	-.1554666	-.0875881
gender	.3948737	.0103222	38.25	0.000	.3746427	.4151048
1.toptenimm~n	-.6038283	.0153348	-39.38	0.000	-.6338839	-.5737727
totalcase	-3.06e-06	8.29e-07	-3.69	0.000	-4.68e-06	-1.43e-06
circuitideo~y	-.254305	.0467344	-5.44	0.000	-.3459028	-.1627072
i0e1casetype	-.2166112	.0181549	-11.93	0.000	-.2521941	-.1810282
Border	-.0545854	.0131302	-4.16	0.000	-.0803202	-.0288506
threeID 2	.1404331	.0183177	7.67	0.000	.104531	.1763352
threeID#/commienoc om~e 2 1	-.0216616	.0249916	-0.87	0.386	-.0706441	.027321
threeID#/commienoc om~e 3 1	.0616273	.0249395	2.47	0.013	.0127468	.1105077
_cons	-.22742	.121832	-1.87	0.062	-.4662064	.0113664

The results of model T examines the interaction between the judicial ideology type variable and the variable that measures whether a petitioner is from a current or former communist country shows statistical significance. All three judge types show a significant increase in probability for petitioners from current or former Communist countries. The increase in probability for petitioners in front of liberal judges was 18% , for moderate judges 16% and for conservative judges 15%.

Figure 15: Model T: Effect on Probability of Asylum Success by Judge Type/ Communist Interaction

Results for Model U: Interaction of Judicial Type and variable measuring extent of trade between petitioner's country of origin and the United States on probability of asylum success.

Table 22: Model U: Judicial Type by Trade

Logistic regression

Number of obs = 201674
LR chi2(31) = 32366.78
Prob > chi2 = 0.0000

Log likelihood = -120386.08

Pseudo R2 = 0.1185

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3985776	.0210363	18.95	0.000	.3573471	.439808
represented	1.093804	.0242451	45.11	0.000	1.046284	1.141323
asylum1tort~2	-1.91860	.0186116	-103.0	0.000	-1.955086	-1.88213
timescount	.0004305	.0001084	3.97	0.000	.000218	.000643
congresside~y	-.0005243	.000299	-1.75	0.079	-.0011104	.0000617
nineelevenn	-.3089386	.0317746	-9.72	0.000	-.3712157	-.2466615
presidentia~y	.0052926	.0179572	0.29	0.768	-.0299028	.040488
humanrights~s	.0301816	.0070092	4.31	0.000	.0164438	.0439195
hearingsenf~t	-.003643	.0021898	-1.66	0.096	-.0079348	.0006489
unemployment	.0621992	.0116658	5.33	0.000	.0393348	.0850637
ashcroftrev~s	.2884398	.0495223	5.82	0.000	.1913779	.3855018
gonzales	-.1828424	.024463	-7.47	0.000	-.230789	-.1348958
realid	.4015525	.0238538	16.83	0.000	.3547999	.4483051
humanrtster~r 2	-.1015934	.0473236	-2.15	0.032	-.1943459	-.0088409
trade	-3.39e-06	6.71e-08	-50.58	0.000	-3.52e-06	-3.26e-06
1.militaryaid	-.4770898	.0140237	-34.02	0.000	-.5045756	-.4496039
1.commienoc~e	.6512843	.0134546	48.41	0.000	.6249138	.6776548
judicialide~y	-.130124	.0173391	-7.50	0.000	-.1641081	-.0961399
gender	.388025	.0103454	37.51	0.000	.3677485	.4083016
1.toptenimm~n	-.6033226	.0153302	-39.36	0.000	-.6333693	-.5732759
totalcase	-2.65e-06	8.27e-07	-3.20	0.001	-4.27e-06	-1.03e-06
circuitideo~y	-.2632873	.0467462	-5.63	0.000	-.3549082	-.1716664
i0e1casetype	-.2145979	.018153	-11.82	0.000	-.250177	-.1790187
Border	-.0535433	.0131139	-4.08	0.000	-.0792461	-.0278405
threeID 2	.0715294	.0175809	4.07	0.000	.0370715	.1059873
threeID#/c.trade 2	6.74e-07	8.02e-08	8.41	0.000	5.17e-07	8.32e-07
threeID#/c.trade 3	4.78e-07	8.21e-08	5.82	0.000	3.17e-07	6.39e-07
_cons	-.2315937	.1217612	-1.90	0.057	-.4702412	.0070539

The results from model U where judicial ideology type was integrated with the variable

that measured the extent of trade the petitioner's home country has with the United States shows

significance for all judge ideology types. As the amount of trade increases, the probability of asylum success decreases from 55% to 19% for petitioners in front of liberal judges, from 46% to 16% for moderate judges and from 44% to 10% for conservative judges..

Figure 16: Model U: Effect on Probability of Asylum Success by Judge Type/ Trade Interaction
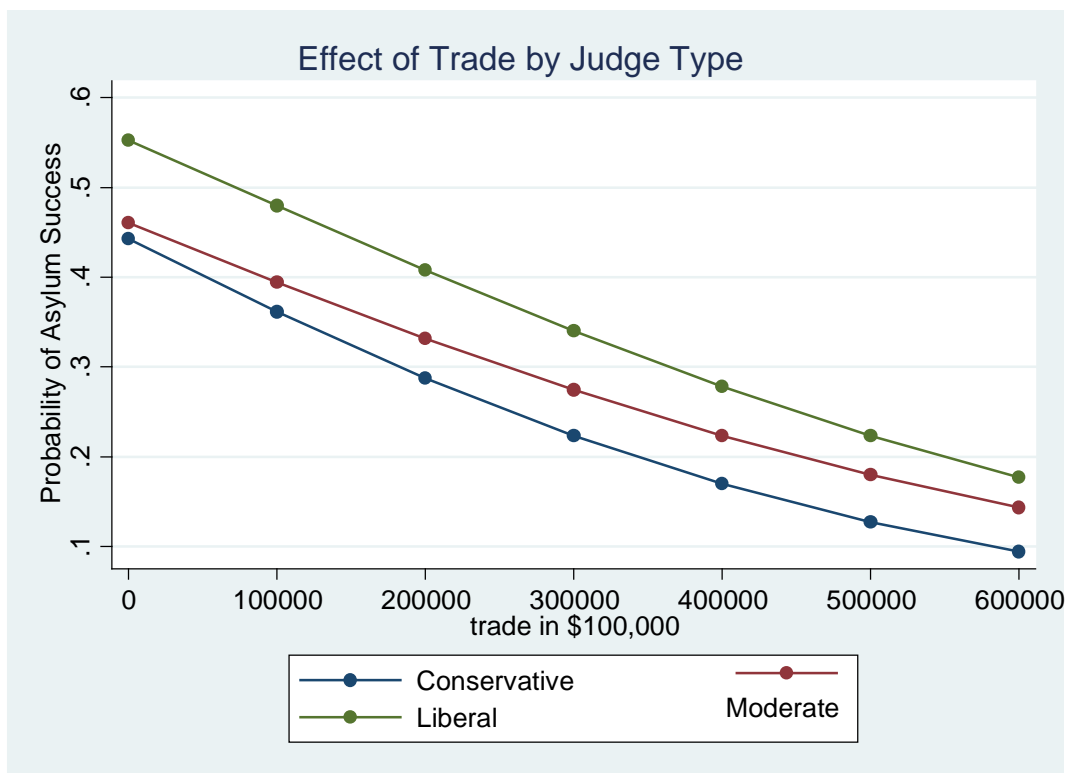
Results for Model V: Interaction of Judicial Type and variable measuring whether petitioner's country of origin is a top ten producer of fraudulent asylum claims on probability of asylum success.

Table 23: Model V: Judicial Type by Top Ten

Logistic regression

Number of obs = 201674
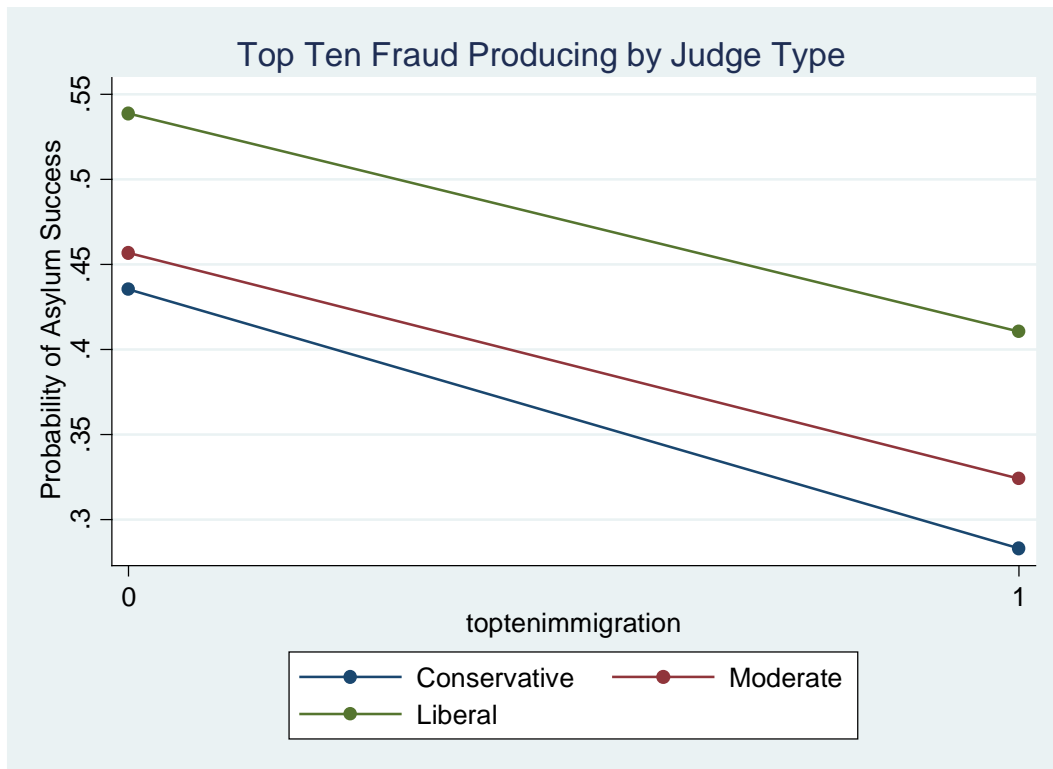LR chi2(31) = 32329.56
Prob > chi2 = 0.0000

Log likelihood = -120404.69

Pseudo R2 = 0.1184

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3997954	.0210154	19.02	0.000	.3586059	.4409848
represented	1.092878	.0242377	45.09	0.000	1.045373	1.140383
asylum1tort~2	-1.920571	.0186247	-103.12	0.000	-1.957075	-1.884068
timescount	.0004264	.0001084	3.94	0.000	.000214	.0006388
congresside~y	-.0005255	.0002989	-1.76	0.079	-.0011113	.0000604
nineelevenn	-.3034032	.0317656	-9.55	0.000	-.3656626	-.2411438
presidentia~y	.00569	.0179512	0.32	0.751	-.0294936	.0408737
humanrights~s	.0293314	.007003	4.19	0.000	.0156058	.043057
hearingsenf~t	-.0039624	.0021887	-1.81	0.070	-.0082522	.0003273
unemployment	.0598631	.0116562	5.14	0.000	.0370174	.0827088
ashcroftrev~s	.2849956	.0495021	5.76	0.000	.1879733	.3820179
gonzales	-.1773933	.0244456	-7.26	0.000	-.2253057	-.1294809
realid	.3983699	.0238382	16.71	0.000	.3516479	.4450918
humanrtster~r 2	-.1009634	.0473268	-2.13	0.033	-.1937222	-.0082045
trade	-3.12e-06	5.89e-08	-52.98	0.000	-3.23e-06	-3.00e-06
1.militaryaid	-.4771142	.014032	-34.00	0.000	-.5046164	-.449612
1.commienoc~e	.6516302	.0134559	48.43	0.000	.6252571	.6780034
judicialide~y	-.1277308	.0173112	-7.38	0.000	-.1616601	-.0938015
gender	.3918248	.0103218	37.96	0.000	.3715946	.4120551
1.toptenimm~n	-.668917	.0186482	-35.87	0.000	-.7054668	-.6323672
totalcase	-2.84e-06	8.27e-07	-3.43	0.001	-4.46e-06	-1.22e-06
circuitideo~y	-.2559521	.0467199	-5.48	0.000	-.3475213	-.1643828
i0e1casetype	-.2170705	.0181585	-11.95	0.000	-.2526606	-.1814805
Border	-.0518409	.0131121	-3.95	0.000	-.0775402	-.0261416
threeID 2	.0868933	.019126	4.54	0.000	.049407	.1243796
threeID#/ toptenimmig~n 2 1	.108548	.0240742	4.51	0.000	.0613634	.1557326
threeID# /toptenimmig~n 3 1	.1516062	.024658	6.15	0.000	.1032774	.1999351
_cons	-.2209744	.1217635	-1.81	0.070	-.4596265	.0176777

The results from model V in which the judicial ideology type variable was interacted with the variable that measures whether the petitioner is from a country that is one of the ten highest producers of fraudulent claims are statistically significant for each judicial type.

Figure 17: Model V: Effect on Probability of Asylum Success by Judge Type/ Top Ten Fraud Interaction

Results for Model W: Interaction of Judicial Type and variable measuring the human rights record of. petitioner's country of origin on probability of asylum success.

Table 24: Model W: Judicial Type by Human Rights Terror

Logistic regression

Number of obs = 201674
LR chi2(37) = 32347.38
Prob > chi2 = 0.0000

Log likelihood = -120395.78

Pseudo R2 = 0.1184

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3866592	.020913	18.49	0.000	.3456704	.427648
represented	1.091783	.0242519	45.02	0.000	1.04425	1.139316
asylum1tort~2	-1.918775	.0186202	-103.05	0.000	-1.95527	-1.882281
timescount	.000429	.0001084	3.96	0.000	.0002166	.0006415
congresside~y	-.0005285	.0002994	-1.77	0.078	-.0011153	.0000583
nineelevenn	-.2991515	.0317771	-9.41	0.000	-.3614334	-.2368696
presidentia~y	.0022102	.0179829	0.12	0.902	-.0330356	.037456
humanrights~s	.0287715	.0070074	4.11	0.000	.0150372	.0425058
hearingsenf~t	-.004247	.0021905	-1.94	0.053	-.0085402	.0000463
unemployment	.0565988	.0116558	4.86	0.000	.0337539	.0794438
ashcroftrev~s	.2861283	.0495211	5.78	0.000	.1890688	.3831878
gonzales	-.1787742	.0244784	-7.30	0.000	-.226751	-.1307973
realid	.4024027	.0238512	16.87	0.000	.3556553	.4491502
humanrtster~r 2	-.1197052	.0681626	-1.76	0.079	-.2533014	.0138909
trade	-3.11e-06	5.87e-08	-52.89	0.000	-3.22e-06	-2.99e-06
1.militaryaid	-.4812722	.0140505	-34.25	0.000	-.5088107	-.4537336
1.commienoc~e	.6530764	.0134692	48.49	0.000	.6266773	.6794755
judicialide~y	-.1238812	.0173294	-7.15	0.000	-.1578462	-.0899162
gender	.3912323	.0103262	37.89	0.000	.3709934	.4114712
1.toptenimm~n	-.6001133	.0153485	-39.10	0.000	-.6301957	-.5700308
totalcase	-2.95e-06	8.28e-07	-3.56	0.000	-4.57e-06	-1.33e-06
circuitideo~y	-.264442	.0467663	-5.65	0.000	-.3561023	-.1727818
i0e1casetype	-.212357	.0181691	-11.69	0.000	-.2479678	-.1767462
Border	-.0580935	.0131301	-4.42	0.000	-.083828	-.0323591
threeID 2	.1701594	.1054993	1.61	0.107	-.0366154	.3769341
threeID#/humanrtster~r 2 2	-.000042	.1116539	-0.00	1.000	-.2188796	.2187956
threeID#/humanrtster~r 2 3	.0464208	.106862	0.43	0.664	-.1630249	.2558665
threeID#/humanrtster~r 2 4	-.0842015	.1068748	-0.79	0.431	-.2936722	.1252692
threeID#/humanrtster~r 2 5	-.1269112	.1086713	-1.17	0.243	-.3399031	.0860807
threeID#/humanrtster~r 3 2	.0881012	.1165523	0.76	0.450	-.140337	.3165395
threeID#/humanrtster~r 3 3	.101894	.1120371	0.91	0.363	-.1176947	.3214826
threeID#/humanrtster~r 3 4	.1127942	.1118744	1.01	0.313	-.1064755	.3320639
threeID#/humanrtster~r 3 5	-.0924255	.1152174	-0.80	0.422	-.3182474	.1333964
_cons	-.1985919	.1300941	-1.53	0.127	-.4535716	.0563878

The results from model W where the judicial type variable was interacted with the human rights record of the petitioner's country of origin are not significant.

Results for Model X: Interaction of Judicial Type and variable measuring the number of Congressional hearings regarding enforcement related issues on probability of asylum success

Table 25: Model X: Judicial Type by Enforcement Hearings

Logistic regression

Number of obs = 201674
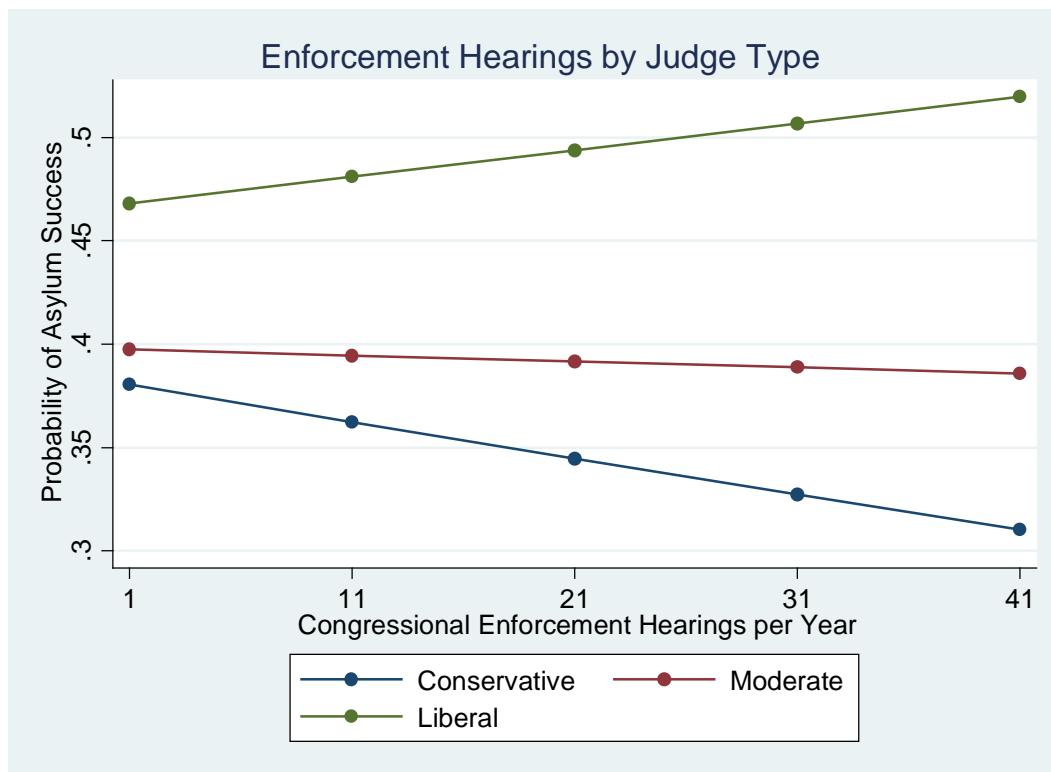LR chi2(31) = 32321.20
Prob > chi2 = 0.0000

Log likelihood = -120408.87

Pseudo R2 = 0.1183

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3856429	.0208945	18.46	0.000	.3446904	.4265954
represented	1.094482	.0242506	45.13	0.000	1.046952	1.142013
asylum1tort~2	-1.918962	.0186188	-103.07	0.000	-1.955454	-1.882469
timescount	.0004521	.0001086	4.16	0.000	.0002392	.0006651
congresside~y	-.0005379	.0002996	-1.80	0.073	-.0011251	.0000493
nineelevenn	-.3104376	.0317965	-9.76	0.000	-.3727575	-.2481177
presidentia~y	.0024389	.0179711	0.14	0.892	-.0327837	.0376615
humanrights~s	.0284277	.0070259	4.05	0.000	.0146571	.0421983
hearingsenf~t	-.0077888	.0023057	-3.38	0.001	-.0123078	-.0032697
unemployment	.060774	.0116541	5.21	0.000	.0379325	.0836156
ashcroftrev~s	.2992157	.0496421	6.03	0.000	.201919	.3965125
gonzales	-.2212039	.0257135	-8.60	0.000	-.2716014	-.1708064
realid	.4174773	.0241381	17.30	0.000	.3701674	.4647871
humanrtster~r 2	-.1004167	.0473651	-2.12	0.034	-.1932505	-.0075829
trade	-3.11e-06	5.87e-08	-52.98	0.000	-3.22e-06	-2.99e-06
1.militaryaid	-.4798066	.0140297	-34.20	0.000	-.5073043	-.452309
1.commienoc~e	.6539576	.0134605	48.58	0.000	.6275754	.6803397
judicialide~y	-.1224175	.0173018	-7.08	0.000	-.1563283	-.0885067
gender	.3951771	.0103172	38.30	0.000	.3749558	.4153985
1.toptenimm~n	-.6015996	.0153266	-39.25	0.000	-.6316392	-.5715601
totalcase	-2.92e-06	8.27e-07	-3.53	0.000	-4.54e-06	-1.30e-06
circuitideo~y	-.2488857	.0467192	-5.33	0.000	-.3404536	-.1573179
i0e1casetype	-.2203068	.0181796	-12.12	0.000	-.2559382	-.1846754
Border	-.0551049	.0131086	-4.20	0.000	-.0807972	-.0294126
threeID 2	.064712	.0266194	2.43	0.015	.0125389	.1168851
threeID# c./ hearingsenf~t 2	.0065798	.0020039	3.28	0.001	.0026522	.0105075
threeID# c./ hearingsenf~t 3	.0129414	.0022085	5.86	0.000	.0086128	.0172699
_cons	-.2238707	.1219423	-1.84	0.066	-.4628732	.0151318

The results from Model X, where the Judicial Ideology type variable is interacted with the variable measuring the number of Congressional enforcement hearings show a significant interaction. As enforcement hearings increase, the probability that moderate and conservative judges grant asylum decreases. The reduction for moderate judges is rather minor at 1%. The number of enforcement hearings has a much larger effect on the probability of asylum success for conservative judges at 7%. For liberal judges, as the number of enforcement hearings increases, the probability of success actually increases by 6%.

Figure 18: Model X: Effect on Probability of Asylum Success by Judge Type/ Number of Enforcement Hearings Interaction

Results for Model Y: Interaction of Judicial Type and variable measuring the number of Congressional hearings regarding human rights related issues on probability of asylum success.

Table 26: Model Y: Judicial Type by Human Rights Hearings

Logistic regression

Number of obs = 201674
LR chi2(31) = 32320.05
Prob > chi2 = 0.0000

Log likelihood = -120409.44

Pseudo R2 = 0.1183

courtapplnd~c	Coef.	Std. Err.	z	P>|z|	[95% Conf. Interval]	
mean5	.3846448	.0208922	18.41	0.000	.3436969	.4255926
represented	1.093285	.0242471	45.09	0.000	1.045761	1.140808
asylum1tort~2	-1.917875	.018617	-103.0	0.000	-1.954364	-1.881387
timescount	.0004447	.0001086	4.10	0.000	.0002319	.0006576
congresside~y	-.0005308	.0003007	-1.77	0.077	-.0011201	.0000585
nineelevenn	-.3123924	.0318669	-9.80	0.000	-.3748503	-.2499344
presidentia~y	.0019788	.0180164	0.11	0.913	-.0333326	.0372903
humanrights~s	.0590051	.0087388	6.75	0.000	.0418773	.0761328
hearingsenf~t	-.0022884	.0022109	-1.04	0.301	-.0066216	.0020449
unemployment	.0627415	.0116714	5.38	0.000	.0398659	.085617
ashcroftrev~s	.2969872	.0495921	5.99	0.000	.1997885	.394186
gonzales	-.2296742	.0260911	-8.80	0.000	-.2808118	-.1785366
realid	.4171494	.0241133	17.30	0.000	.3698883	.4644106
humanrtster~r 2	-.0992985	.0473452	-2.10	0.036	-.1920934	-.0065035
trade	-3.11e-06	5.87e-08	-53.03	0.000	-3.23e-06	-3.00e-06
1.militaryaid	-.4798391	.0140283	-34.21	0.000	-.5073341	-.4523441
1.commienoc~e	.6540282	.0134599	48.59	0.000	.6276472	.6804092
judicialide~y	-.1190078	.0172977	-6.88	0.000	-.1529108	-.0851049
gender	.3932129	.0103176	38.11	0.000	.3729908	.4134351
1.toptenimm~n	-.6016901	.0153279	-39.25	0.000	-.6317322	-.5716479
totalcase	-2.98e-06	8.27e-07	-3.60	0.000	-4.60e-06	-1.36e-06
circuitideo~y	-.250986	.0467211	-5.37	0.000	-.3425576	-.1594144
i0e1casetype	-.2145932	.0181668	-11.81	0.000	-.2501994	-.178987
Border	-.0537278	.0131074	-4.10	0.000	-.0794179	-.0280377
threeID 2	.2056372	.0226665	9.07	0.000	.1612116	.2500627
threeID# c./ humanrights~s 2	-.0517709	.0116225	-4.45	0.000	-.0745506	-.0289913
_cons	-.3243296	.1226586	-2.64	0.008	-.5647361	-.0839231

The results from Model Y, where the Judicial Ideology type variable is interacted with

the variable measuring the number of Congressional human rights hearings show a significant

interaction. As human rights hearings increase, the probability that liberal judges grant asylum decreases slightly from 48% to 47%. For moderate judges the model produces a very small increase from 39.5% to 40.00%. For conservative judges the number of human rights hearings has a much larger effect on the probability of asylum of 6%.

Figure 19: Model Y: Effect on Probability of Asylum Success by Judge Type/ Human rts hearings Interaction
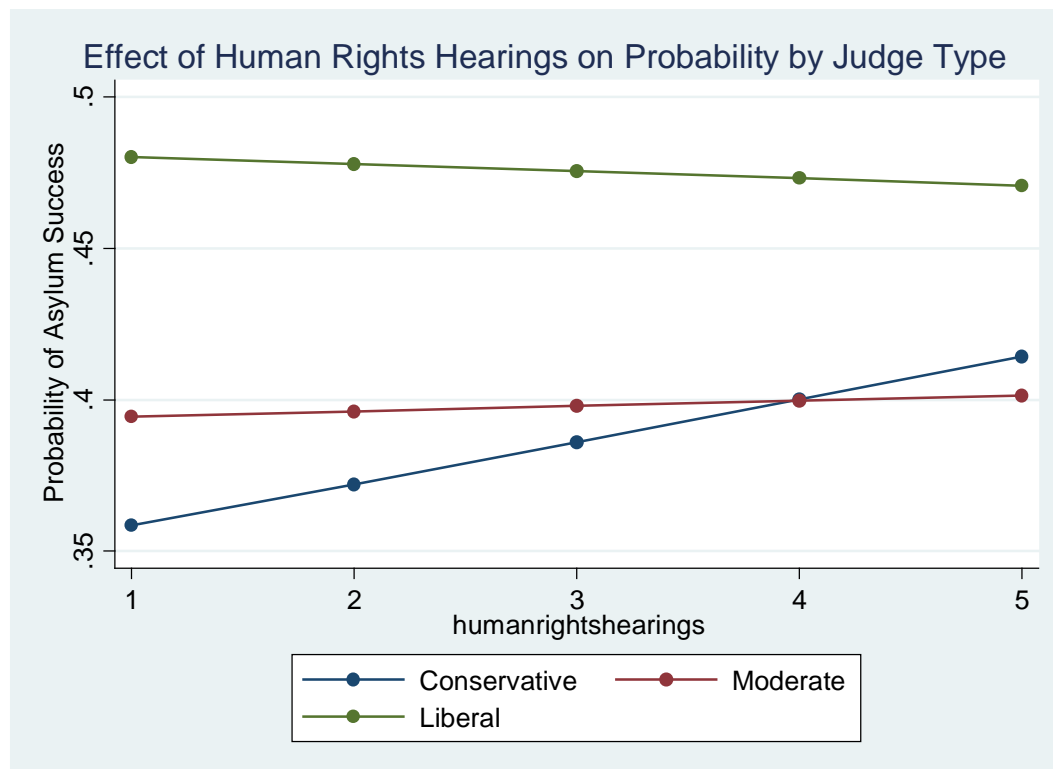
Discussion

The results confirm the central hypothesis of this chapter and dissertation that immigration judges are rational actors situated in an institutional and social framework that limits but does not totally control how and when they exercise discretion in furtherance of political goals. Despite evidence that a variety of factors influence the rate at which immigration judges grant asylum, at their core, immigration judges are political actors. By separating the

judges into liberal, moderate and conservative judge types, I was able to examine how judges with different ideologies respond to change in a range of variables. Consistent with scholarship on the role of case load and the exercise of bureaucratic discretion, I found that as the overall caseload of immigration judges increases, they are more likely to make decisions in keeping with their ideological preferences. As case load increases, conservative judges are much less likely to grant asylum, liberal judges are much more likely and moderate judges probability rates do not change much at all. There are a number of possible explanations for these results. A number of bureaucratic scholars have argued that high caseloads cause agents to ignore agency policy and rely on their own policy preferences as a method of dealing with limited time and resources. Others argue that high case load limits the ability of principals to exercise actual control over the actions of their agents thus allowing them to act in accordance with their ideological preferences. Whatever the explanation the results from this chapter show that immigration judges behave in ways that are similar to bureaucrats when faced with high case-loads. Despite the large number of institutions and factors that have been shown to influence immigration judge behavior, underneath they are political actors. When political actors are faced with lessor constraints, they are more likely to behave in ways that are consistent with their own policy preferences.

The results also confirm that judges with different ideologies will respond differently to the same factors. As political actors, immigration judges will place more emphasis on the characteristics that coincide with their policy preferences and less to those that do not. Conservative judges respond to the presence of conservative presidents and conservative majorities in Congress by significantly reducing the number of petitioners granted asylum. Moderate judges respond to the same changes with little to no change in the rate that they grant asylum. Liberal judges respond to the same changes by actually increasing the rate at which they

167

grant asylum. Similar results were shown when examining the role of Congressional hearings in the rate that immigration judges grant asylum. Conservative judges respond to increased Congressional attention to enforcement issues by reducing the numbers of petitioners granted asylum, while moderate and liberal judges do not change their behavior. Conservative judges also respond differently than moderate and liberal judges to the mean ideology of other judges who preside in the same immigration court. While moderate and liberal judges provide asylum at a higher rate as mean ideology becomes more liberal, conservative judges do not seem to be affected at all.

The results did not confirm all of the hypotheses however. It does not appear that judicial ideology has any bearing upon whether judges place more emphasis on human rights factors in making decisions to grant or deny asylum. Nor does it appear that judicial ideology type has any influence on the weight immigration judges place on whether a petitioner is from a country that receives military aid from the United States.

Overall, the results are consistent with my general hypotheses regarding the role of ideology in immigration judge behavior. It is not simply the case that liberal judges grant asylum more than conservative judges. Rather, it appears that something more complex is going on. Liberal judges are responding to both endogenous and exogenous forces differently than moderate or conservative judges and vice versa. They are essentially different types of actors than their moderate or conservative colleagues. This does not mean that the behavior of immigration judges cannot be examined using models that are based upon rational choice theory. Rather, it adds a level of complexity to the analysis. In a way it is no different from the manner in which the attitudinal model is applied to the behavior of the United States Supreme Court. Critics of the attitudinal model often argue that the model cannot explain unanimous decisions on

salient issues such as those involving the First Amendment right to free speech. However, this ignores the aspect of the attitudinal model which examines in a manner that is more complex than the political party of the president who nominated them. Rather, each judge is scored upon her or his positions on each issue. Thus, although Ruth Bader Ginsberg and Antonin Scalia differ significantly on a number of issues, they have the same policy positions regarding certain free speech related issues. Thus they can still behave attitudinally while agreeing with each other on the results of certain cases.

It would be next to impossible to examine the positions of immigration judges on every aspect of the asylum process in the same manner that as Supreme Court judges. However, by applying the background based ideological scoring system set up by Keith Holmes & Miller (2013 & 2014), I have been able to place judges into categories that more accurately predict their behavior than simply relying on the ideology of the president who appointed them. Judges who were placed in the conservative category are predominantly comprised of persons who have worked for the INS, Department of Justice or the Military. These judges are not just more conservative, they also have a different idea about immigration enforcement in general and asylum adjudication in particular. The judges placed in the liberal category come from employment backgrounds where they represented individual immigration petitioners, non-profits that aid immigrants and academia. They are not just more liberal but also look at the process from a different prospective. The judges placed in the moderate category either have mixed backgrounds or backgrounds that are not directly immigration based. Not surprisingly, conservative justices are not merely less likely to grant asylum, they are actually looking at and responding to variables differently than their moderate and liberal colleagues.

This is an important advance not only in the understanding of immigration judge behavior but also in the behavior of all street level judges and bureaucrats. It moves the discussion past the simple notion that liberal officials are more generous in making decisions than conservative ones. It also raises questions regarding the efficacy of efforts to constrain lower level bureaucratic and judicial discretion. If, as the above results appear to reveal, ideology not only shapes how judges make decisions, but also how they respond to attempts to control that behavior, it. has the potential to undermine previous assumptions about the function and efficacy of efforts at oversight.

Conclusion

This dissertation began with a simple question: why did the Romeikes get asylum when the legal facts and political environment seemed to point to a denial. One simple answer would have been that Judge Burman merely made an idiosyncratic decision based upon facts that were particular to that case. However, once the disparity in asylum grant rates between judges across the country was examined, it appeared that something else was going on. In a reality where two judges sitting in the same court, seeing the same type of petitioners, have a 60% difference in the rate that they grant asylum, it appeared that decisions like the Romeikes are not anomalies. Thus the question shifted to how can one explain why some immigration judges grant asylum at extremely high rates while others grant at extremely low rates.

In order to answer this question I believed that it was necessary to examine a number of factors that could potentially influence judicial behavior. Building upon the literature of judicial behavior, I examined how the ideology of immigration judges influenced their behavior. From top-down bureaucratic approaches I examined how pressure from political institutions which have oversight over immigration judges influence their behavior. Additionally, I examined

170

variables developed through studies of street level bureaucrats, such as case load and agency

characteristics impact decisions to grant or deny asylum. Finally, I examined how judges with

different ideologies responded to shifts in variables from the judicial behavior and bureaucratic

models.

The results that I have obtained not only provide valuable insight into the behavior of

immigration judges and other Administrative Law Judges but potentially all lower level courts

and bureaucracies.

Summary of Results

The scope of the research in this study includes final decisions reached by immigration

judges in asylum claims from 1997-2013 for applicants for Asylum. The decisions of

immigration judges, as well as the country of origin of the petitioner, date of decision and court

location were gleaned from a FOIA request and include over 235,000 petitions from 1997 to

2013.

Chapter VI: A Comparison of Models of Immigration Judge Behavior in Asylum Cases

In Chapter Six, I compared the results produced by two models that have previous been

applied to asylum decisions by immigration judges, attitudinal and top-down bureaucratic

models, to a multi-institutional model which combined aspects of both as well as variables

developed in studies of street level bureaucracies. In order to examine whether this multi-

institutional approach provided a better understanding of immigration judge behavior I applied

each of the models to my data set of 235,000 asylum petitions. The comparison of these three

models produced a number of important findings. The first is that the results confirm a vast

majority of my hypotheses regarding immigration judge behavior. Liberal judges are more likely

to grant asylum than conservative judges. Petitioners from countries with ideological, trade or military ties to the United States are less likely to obtain asylum than those from countries that do not have these ties. During years in which immigration judges are overseen by a Congress that is more concerned with human rights issue, immigration judges are more likely to grant asylum, when focus is on enforcement they are less likely. The ideology of Congress and the Presidency also play a statistically significant role. Judges who make decisions in courts where the other judges are liberal are more likely to grant asylum. The busier that judges are, the more likely they are to deny asylum.

Several of these findings have never been reported before. Perhaps the most novel result was the influence that mean-judicial ideology of a particular immigration court played in a petitioner's probability of success. There has as of yet been no study which shows such an effect in non-collegial courts. The large marginal effect on probability of asylum success that mean immigration court ideology plays on chances to obtain asylum is a novel finding. Judges who are surrounded by liberal judges are more likely to grant asylum than those surrounded by conservative judges. I do not believe that such effects have been shown in a non-collegial court. I believe that the effect of mean immigration court ideology reveals that immigration court are more akin to street-level bureaucracies then previously assumed. The behavior of street-level bureaucrats has been shown to be influenced by agency culture. The findings from this chapter appear to reveal that the culture of each immigration court influences the behavior of the individual immigration judges.

The results from the models examined in chapter Six are also the first to find a connection between caseload and the probability of obtaining asylum. Studies of street level bureaucracies have found that as caseload increases, agents are more likely to act in accordance

172

with their personal preferences. The results from this research reveal that immigration judges are also similar to bureaucrats in this manner as well.

Another important conclusion that can be drawn from the findings in chapter Six is that traditional approaches to understanding immigration judge behavior are not sufficient. Past work on immigration judges has shown that ideology plays a role in their decision making process. (Ramji-Nogales, Schoenholtz, Schrag, 2008). But such studies never examined how political, economic and social factors influenced judicial behavior. Conversely, while previous bureaucratically centered studies of immigration judge behavior examined a number political, economic, and social factors, they did not include the role of judicial ideology. Furthermore, no previous studies have examined the role of case load and the ideology of other judges in the same court on IJ behavior. The results of my multi-institutional model show that approaches which fail to examine the totality of the factors influencing judicial behavior in asylum proceedings are deficient.

The results from chapter six reveal that immigration judges do not behave entirely like other judges nor do they behave entirely like bureaucrats. While the results show that these judges make decisions based upon their judicial ideologies, it is apparent that models relying on ideology alone fail to adequately explain the complexity of their decision making process. Similarly, models that ignore the role of ideology in decision making, such as top-down bureaucratic models, fail to adequately capture the extent to which judicial ideology plays a part.

Chapter VII: Influence of Political and Social Factors on Immigration Judge Behavior

In this chapter I intend to extend upon the findings of Salehyhan and Rosenvlum (2008) in order to determine whether immigration judges give more weight to some variables based

upon political or public focus. They found evidence that when Congress and the public focus on different aspects of the immigration issue, immigration judges give more weight towards either political or human rights variables. In this chapter I tested their hypotheses through the use of interaction effects in my multi-institutional model. Salehyan and Rosenblum's study was limited however, in the fact that it did not examine any characteristics of immigration judges, the courts they sat on, or the Circuit Courts that had jurisdiction over them. My study is the first to examine these effects through models that include variables drawn from attitudinal, top-down bureaucratic and street level bureaucratic models. The results show that the grant or denial of asylum continues to have political connotations both domestically and internationally. During periods where public and political forces are fixated upon immigration as a law enforcement issue the rate at which immigration judges grant asylum is reduced. During periods where attention is focused on asylum as a human rights issue, the rate of success increases. What is most interesting, however, is not only that asylum success rate is influenced by the type of political and social attention drawn to asylum related issues, but how that attention affects the way immigration judges make decisions. The results from chapter 7 reveal that during periods of heightened attention towards either enforcement or human rights concerns, petitioners are still being granted asylum, but the factors that determine likelihood of asylum success change. During enforcement centered periods, immigration judges give more emphasis towards the political factors that influence whether a person is granted asylum. Thus, when asylum becomes an issue that is tied up with law enforcement, judges are more likely to place more emphasis on political, economic and military ties between a petitioner's home country than the human rights record of that country. During periods where political and public concern focuses on human rights issues related to immigration, judges place more of an emphasis on human rights records

174

from petitioners' countries of origin. These findings are the first to show this impact in a model that includes variables measuring characteristics of each individual case as well as the ideology of the immigration judge making the decision.

Chapter VIII: The Effects of 9/11 on Immigration Judge Behavior

Chapter Eight examined how the events of 9/11 changed how immigration judges made decisions on asylum cases. Building upon research which has looked at the Supreme Court deference towards the executive branch during times of war, I examined whether similar deference was shown by immigration judges following 9/11. The marginal effect of the variable which measures whether a petitioner's case was decided before or after 9/11 is -9.3% in the multi-institutional model set forth in chapter 6. Since the grant or denial of asylum is often tied to the political concerns of the executive, immigration judges are in the position of making decisions every day that have potential foreign policy implications. The results from chapter eight reveal that the events of 9/11 brought foreign policy considerations to the fore in asylum decisions as the United States sought allies to help fight the war on terror.

The models in this chapter consider the effects of the interaction of variables measuring political and economic ties between the United States and the petitioner's home country with the variable that measures whether a case was decided before or after 9/11. The interaction between the 9/11 variable and the variable which measures the human rights record of the petitioner's country of origin was also examined. Additionally, the interaction between the variable that measures the level of public attention towards asylum issues and the 9/11 variable was included into the multi-institutional model. What I discovered was that the events of 9/11 resulted in immigration judges placing greater emphasis on the political aspects of the asylum process as opposed to human rights concerns. After 9/11, immigration judges placed less emphasis on the

175

human rights records of petitioners' home countries in making their decisions than before. As immigration judges relied less upon human rights concerns in making their decisions following 9/11, they relied more heavily on political variables.

CHAPTER X - EXAMINING IMMIGRATION JUDGE BEHAVIOR BY JUDGE TYPE

Chapter Nine examined the interaction of a variable that placed immigration judges into one of three ideology categories; Liberal, Moderate or Conservative with political and human rights variables. It builds upon a number of judicial and bureaucratic studies which have examined the role of case load on how judges and bureaucrats exercise discretion. Previous work such as Taylor & Kelly (2006) has found that as case load increases, judges and bureaucrats are less likely to follow formal rules and more likely to make decisions based upon their own personal preferences. The results from Chapter Nine reveal that immigration judges behave similarly to street level bureaucrats and lower level judges in the face of rising caseloads. As case load increased, judges are more likely to exercise their discretion in a manner in keeping with their own ideologies. Conservative judges granted asylum less, moderate judges largely granted asylum at the same rate and liberal judges granted asylum at a greater rate.

This chapter also examined whether categories of judges respond differently to variables set forth in the multi-institutional model set forth in chapter 6. Building upon the work of Keith Holmes & Miller (2013 & 2014) I examined the extent that liberal judges respond differently to certain characteristics of asylum applicants than moderate or conservative judges.

The results from chapter nine also revealed that judges in different ideology groups respond in significantly different ways to the same stimuli. Conservative judges responded to the presence of conservative presidents and conservative majorities in Congress by significantly reducing the number of petitioners granted asylum. Moderate judges respond to the same changes with little to no change in the rate that they grant asylum. Liberal judges respond to the same changes by actually increasing the rate at which they grant asylum. Similar results were shown when examining the role of Congressional hearings in the rate that immigration judges

177

grant asylum. Conservative judges respond to increased Congressional attention to enforcement issues by reducing the numbers of petitioners granted asylum, while moderate and liberal judges do not change their behavior. Conservative judges also respond differently than moderate and liberal judges to the mean ideology of other judges who preside in the same immigration court. While moderate and liberal judges provide asylum at a higher rate as mean ideology becomes more liberal, conservative judges do not seem to be affected at all.

Policy Implications

The results from the empirical chapters provide several important lessons for policy makers. The first involves the balance between independence and accountability. While the results show that immigration judges have a level of independence in their decision making, a number of political and social factors also play significant roles in these decisions. A simple analysis of the wide discrepancy in the rate that asylum is granted might lead one to conclude that efforts need to be made in order to curb the independence of immigration judges. During the almost 20 year time period that forms the basis of this study, Congress, the judiciary as well as the executive branch have all taken steps to reign in this independence. While these steps have been shown to affect the overall rates at which immigration judges grant asylum, there has been little to no reduction in the level of variance between judges. Thus policy makers can make changes which make it more or less likely on average for asylum seekers to succeed, they have not been able to use policy to make judges decide cases in a more uniform manner. This study helps to explain why policy changes have not made the asylum process more standard. Immigration judges from different ideological backgrounds look at the asylum process in substantially different ways. They respond to the same stimuli in different ways as well. Efforts to constrain the independence of judges may have a different effect on a liberal judge than a

conservative one. Any subsequent policy proposals designed to address discrepancies in asylum grant rates must be cognizant of the complexity of this system.

The second lesson is a natural off-shoot of the first, the type of immigration judge that is appointed means a great deal. It turns out that the professional background of an immigration judge is much more telling of how they will make decisions than the political affiliations of the president who appointed them. Immigration judges with backgrounds working for the INS or the military will decide cases differently than those who worked in academia or for immigration based non-profits. Because of this, policy makers need to scrutinize the backgrounds of nominees more carefully if they expect to obtain a judiciary that will act the way that they wish.

The third lesson is that, despite the difficulty in getting judges to behave more uniformly, policy makers do indeed have significant impact on the behavior of these judges. While the influence may not always go in the direction intended, immigration judges do respond to shifts in the makeup of Congress, the judiciary and the executive branch. They also respond when Congress shifts its area of focus from treating asylum as an enforcement issue to treating it as a human rights problem.

The fourth lesson concerns the role of asylum as a foreign policy issue. Despite efforts to remove the asylum process from the realm of the political, politics still play a huge role in who gets asylum. Whether these are the political goals of the judges making the decisions, the political goals of the principals who have oversight over them or the prevailing political mood of the citizenry, immigration judges are influenced by politics. It is difficult to see how the influence of politics can be entirely curbed. One could argue that changing the nature of the immigration judge position might remove a portion of this political influence. If these judges were firmly entrenched as Article III judges, with the same protections as Federal district and

circuit judges, the pressure to bow to outside political pressures would certainly diminish. However, this would not remove politics entirely from the equation as these judges would then be more free to follow their own political predispositions.

The fifth lesson speaks to how immigration judges are viewed. Rather than looking at these actors as either agents in a principal agent relationship, or street level bureaucrats in a bottom-up model, we must look at them as both. Their status as judges in some way differentiates them from case workers deciding who gets social security disability benefits. However, the vast number of cases they handle, and the relatively little to no real oversight they face, place them in situations that are more like a case worker than a district court judge. Policy makers concerned with obtaining more uniform results for asylum seekers across the country need to realize that as immigration judge's case loads increase, they will most likely respond in similar ways as case workers do, namely relying on their own policy preferences to a greater degree. It is not a surprise that the largest differences in asylum grant rates can be seen between judges in the busiest immigration courts.

Future Areas of Inquiry

A number of possible future areas of study are opened up by this research. A number of questions still remain regarding the behavior of immigration judges. In particular I am interested in the extent to which the US State Department has influenced asylum decisions. Until relatively recently, the US State Department was required to weigh in on every asylum case that was brought before immigration judges. There is anecdotal evidence that their input was almost always dispositive. In the past it has been impossible to study the effects of these recommendations due to privacy concerns. I believe that a more narrowly construed FOIA request will take care of previous problems and allow me to pursue this avenue of inquiry.

Another possible future course of research would be to see if the multi-institutional model can work outside the context of asylum decisions. Although it would present some difficulties, I am interested to see the extent that the same variables that affect immigration judge behavior in asylum cases apply to other immigration related decisions.

I also hope to determine whether my multi-institutional model can be applied to other administrative courts. While a number of the variables used in this model are unique to immigration judges, the overall approach in which ALJ judges are examined through a combination of attitudinal, top-down bureaucratic and street-level bureaucratic approaches would seem to be applicable to a large array of administrative law courts.

Perhaps the most far reaching ongoing application of this model and my research would be to examine whether this model helps explain the behavior of state lower court judges. I intend to use a variation of this model to examine sentencing decisions in felony cases in Michigan. It is my belief that these judges often face similar pressures as those faced by immigration judges,. I also believe that their behavior can best be examined through models that include variables developed through attitudinal, top-down bureaucratic and street level bureaucratic studies.

Concluding Remarks

Judges of all levels are often tasked with doing the impossible. On one hand they are supposed to use their expertise to make sound legal decisions. We put them into positions of power and authority precisely because they have expertise that we lack. However, we want them to make decisions that correspond to what we think are just and fair. We pretend that we want judges who are impartial and insulated from public pressure, but in reality we want them to make decisions that conform to this pressure. Politicians who are tasked with establishing policies that govern the behavior of judges are in a similar situation as the citizenry as a whole. They like the

idea of impartial learned judges who dispense law from an insulated position. They set up institutional arrangements that allow for judicial autonomy. However, they often do not like the reality that such a level of autonomy produces. Thus they pass laws that attempt to constrain this autonomy. This dissertation is largely an attempt to understand how actors behave when they are placed into such a contradictory situation. The intense scrutiny that has been levied on immigration related issues after 9/11 has only brought about new efforts to constrain judicial discretion. At the same time, the environment of fear and political posturing that characterizes much of our current discourse concerning immigration highlights the need for a judiciary that has the independence necessary to make sound legal decisions. Immigration judges are far from unique in this manner. In many ways this situation is faced by all ALJs as well as bureaucracies of all levels.

REFERENCES

Integrated Models of Judicial Dissent. 1993. The Journal of Politics 55 (4): 914-35.

Study: Asylum process improves, but justice has a ways to go. 1993. Human Rights 20 (2) (Spring 1993): 20.

Agendas, alternatives, and public policies. (book review)1985. . Vol. 45.

Adams, John. 1788. A defence of the constitutions of government of the united states of americaLondon: Printed for C. Dilly, in the Poultry.

Aiken, Michael, and Jerald Hage. 1966. Organizational alienation: A comparative analysis. American Sociological Review 31 (4): 497-507.

Aldrich, John H. 1995. Why parties? : The origin and transformation of political parties in america / john H. aldrichChicago : University of Chicago Press.

Bailey, Michael A. 2011. The constrained court law, politics, and the decisions justices make, ed. Forrest Maltzman. Princeton: Princeton : Princeton University Press.

Bailey, Michael A. 2007. Comparable preference estimates across time and institutions for the court, congress, and presidency. American Journal of Political Science 51 (3): 433-48.

Bailey, Michael A., Brian Kamoie, and Forrest Maltzman. 2005. Signals from the tenth justice: The political role of the solicitor general in supreme court decision making. American Journal of Political Science 49 (1): 72-85.

Barnett, Don. 2002. US immigration policy: Asylum-seekers and refugees. The Journal of Social, Political, and Economic Studies 27 (2) (Summer 2002): 151-65.

Beougher, Mark. 2014. Romeike v. Holder: When violation of a human right is not grounds for asylum. Justice System Journal 35 (2): 233-6.

Billings, Peter W. 2000. A comparative analysis of administrative and adjudicative systems for determining asylum claims. Administrative Law Review 52 (1) (Winter 2000): 253-303.

Bockley, Kathryn M. 1995. A historical overview of refugee legislation: The deception of foreign policy in the land of promise. North Carolina Journal of International Law and Commercial Regulation 21 (1): 253-92.

Bohte, John, and Kenneth J. Meier. 2000. Goal displacement: Assessing the motivation for organizational cheating. Public Administration Review 60 (2): 173-82.

Bon Tempo, Carl J. (Carl Joseph). 2008. Americans at the gate: The United States and refugees during the cold war / carl J. bon tempo Princeton: Princeton University Press.

Bowie, Jennifer Barnes, and Donald R. Songer. 2009. Assessing the applicability of strategic theory to explain decision making on the courts of appeals. Political Research Quarterly 62 (2) (Jun 2009): 393-407.

Bowling, Cynthia Jones. 1998. Bureaucrats in the budget process: Explaining administrative preferences for expansion. Ph.D., The University of North Carolina at Chapel Hill.

Brace, Paul R., and Melinda Gann Hall. 1997. The interplay of preferences, case facts, context, and rules in the politics of judicial choice. The Journal of Politics 59 (4) (Nov 1997): 1206-31.

Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. Measuring the preferences of state supreme court judges. The Journal of Politics 62 (2) (May 2000): 387-413.

Brace, Paul, Jeff Yates, and Brent D. Boyea. 2012. Judges, litigants, and the design of courts. Law & Society Review 46 (3): 497-522.

Brace, Paul, and Melinda Gann Hall. 2001. "Haves" versus "have nots" in state supreme courts: Allocating docket space and wins in power asymmetric cases. Law & Society Review 35 (2): 393-417.

Calvert, Randall L., Mathew D. McCubbins, and Barry R. Weingast. 1989. A theory of political control and agency discretion. American Journal of Political Science 33 (3) (Aug 1989): 588.

Canes-Wrone, Brandice. 2006. Who leads whom? : Presidents, policy, and the public / brandice canes-wroneChicago : University of Chicago Press.

Canes-Wrone, Brandice. 2003. Bureaucratic decisions and the composition of the lower courts. American Journal of Political Science 47 (2): 205-14.

Clinton, Joshua D., Anthony Bertelli, Christian R. Grose, David E. Lewis, and David C. Nixon. 2012. Separated powers in the united states: The ideology of agencies, presidents, and congress. American Journal of Political Science 56 (2): 341-54.

Cohen, George. 2005. Fever & thirst: A missionary doctor amid the christian tribes of kurdistan. The Booklist 102 (7) (Dec 1, 2005): 8.

Conover, Ted. 1993. The united states of asylum. New York Times Magazine. Sep 19, 1993.

Cronin, Thomas E. 1980. A resurgent congress and the imperial presidency. Political Science Quarterly 95 (2): 209-37.

Crozier, Michel. 1964. The bureaucratic phenomenon / translated by the authorChicago : University of Chicago Press.

Davis, Sue, and Donald R. Songer. 1988. The changing role of the United States courts of appeals: The flow of litigation revisited. Justice System Journal 13 (3) (Dec 1988): 323-40.

de Neufville, Judith Innes. 1986. Human rights reporting as a policy tool: An examination of the state department country reports. Human Rights Quarterly 8 (4): 681-99.

Downs, Anthony. 1966. Bureaucratic structure and decision-making / anthony downsSanta Monica, Calif. : Rand Corp.

Downs, Anthony. 1957. An economic theory of democracy. New York: Harper.

Downs, Anthony, and Rand Corporation. 1967. Inside bureaucracy. Boston: Little, Brown.

Eggen, Dan, and Amy Goldstein. 2007. Immigration judges often picked based on GOP ties: Law forbids practice; courts being reshaped. Vol. 0.

Epstein, Lee, and Jack Knight. 2000. Toward a strategic revolution in judicial politics: A look back, A look ahead. Political Research Quarterly 53 (3): 625.

Epstein, Lee, Andrew Martin, Jeffrey Segal, and Chad Westerland. 2007. The judicial common space. Journal of Law Economics & Organization 23 (2): 303-25.

Fix, Michael P., and Kirk A. Randazzo. 2010. Judicial deference and national security: Applications of the political question and act of state doctrines. Democracy and Security 6 (1): 1-16.

Fullerton, Maryellen. 2010. Terrorism, torture, and refugee protection in the united states. Refugee Survey Quarterly 29 (4) (Dec 2010): 4.

Gibney, Mark. 1988. A "well-founded fear" of persecution. Human Rights Quarterly 10 (1): 109.

Gilbert, Geoffrey S. 1983. Right of asylum: A change of direction. International and Comparative Law Quarterly; ICLQ 32 (3): 633-50.

Goodsell, Charles T. 1981. The public encounter : Where state and citizen meet / edited by charles T. goodsellBloomington : Indiana University Press.

Green, Mark Thomas. 1999. The political economy of the reinvented bureaucracy. Ph.D., The Claremont Graduate University.

Green, A. D. 1966. The professional social worker in the bureaucracy. Social Service Review 40 (1): 71-83.

Gross, Douglas. 1980. The right of asylum under united states law. Columbia Law Review 80 (5): 1125-48.

Hage, Jerald, and Michael Aiken. 1967. Program change and organizational properties a comparative analysis. American Journal of Sociology 72 (5): 503-19.

Hall, Melinda Gann, and Paul Brace. 1996. Justices' responses to case facts. American Politics Quarterly 24 (2) (Apr 1996): 237.

Hall, Melinda Gann, and Paul Brace. 1992. Toward an integrated model of judicial voting behavior. American Politics Quarterly 20 (2) (Apr 1992): 147.

Hall, Melinda Gann, and Paul Brace. 1989. Order in the courts: A neo-institutional approach to judicial consensus. The Western Political Quarterly 42 (3) (Sep 1989): 391.

Hammond, Thomas H., and Jack H. Knott. 1999. Political institutions, public management, and policy choice. Journal of Public Administration Research and Theory 9 (1) (Jan 1999): 33-85.

Hammond, Thomas H., and Jack H. Knott. 1996. Who controls the bureaucracy?: Presidential power, congressional dominance, legal constraints, and bureaucratic autonomy in a model of multi-institutional policy-making. 12 (1): 119-66.

Hasenfeld, Yeheskel. 1981. Michael lipsky, "street-level bureaucracy: Dilemmas of the individual in public services" (book review). Vol. 55. Chicago: University of Chicago Press, etc.

Hasenfeld, Yeheskel. 1974. Human service organizations : A book of readings / yeheskel hasenfeld and richard A. english, ed. Richard A. EnglishAnn Arbor : University of Michigan Press.

Heclo, Hugh. 1977. Political executives and the washington bureaucracy. Political Science Quarterly 92 (3): 395-424.

Helton, Arthur C. 1984. Political asylum under the 1980 refugee act: An unfulfilled promise. (special issue: Reforming immigration and naturalization policy). University of Michigan Journal of Law Reform 17 (2): 243-64.

Hettinger, Virginia A., Stefanie A. Lindquist, and Wendy L. Martinek. 2004. Comparing attitudinal and strategic accounts of dissenting behavior on the U.S. courts of appeals. American Journal of Political Science 48 (1) (Jan 2004): 123-37.

Howard, Robert M., and David C. Nixon. 2002. Regional court influence over bureaucratic policymaking: Courts, ideological preferences, and the internal revenue service.Political Research Quarterly 55 (4) (Dec 2002): 907-22.

Humphries, Martha Anne, and Donald R. Songer. 1999. Law and politics in judicial oversight of federal administrative agencies. The Journal of Politics 61 (1) (Feb 1999): 207-20.

Hurwitz, Mark S., Removing Judges: The Cases of Immigration Judges Jeffrey Chase and Noel Ferris. The Justice System Journal 31 (1) (2010): 114-116.

Jay, John, Alexander Hamilton, and James Madison. 1947. The federalist : A commentary on the constitution of the united states written by alexander hamilton, james madison and john jay / including the complete text of the constitution ; with an introduction by edward gaylord bourneNew York : Tudor.

Kassow, Benjamin, Donald R. Songer, and Michael P. Fix. 2012. The influence of precedent on state supreme courts. Political Research Quarterly 65 (2) (Jun 2012): 372-84.

Kaufman, Herbert. 1981. The administrative behavior of federal bureau chiefs / herbert kaufman Washington, D.C. : Brookings Institution.

Kaufman, Herbert. 1960. The forest ranger : A study in administrative behavior Baltimore : Published for Resources for the Future by Johns Hopkins Press.

Keele, Denise M., Robert W. Malmsheimer, Donald W. Floyd, and Lianjun Zhang. 2009. An analysis of ideological effects in published versus unpublished judicial opinions.Journal of Empirical Legal Studies 6 (1): 213-39.

Keiser, Lael R. 2010. Understanding street-level bureaucrats' decision making: Determining eligibility in the social security disability program. Public Administration Review 70 (2): 247-57.

Keith, Linda Camp, Jennifer S. Holmes, and Banks P. Miller. 2013. Explaining the divergence in asylum grant rates among immigration judges: An attitudinal and cognitive approach. Law & Policy 35 (4): 261-89.

Kelly, Marisa. 1994. Theories of justice and street-level discretion. Journal of Public Administration Research and Theory: J-PART 4 (2): 119-40.

Kerwin, Donald. 2012. The faltering US refugee protection system: Legal and policy responses to refugees, asylum-seekers, and others in need of protection. Refugee Survey Quarterly 31 (1) (Mar 2012): 1.

Kim, Doo-Rae. 2008. Political control and bureaucratic autonomy revisited: A multi-institutional analysis of OSHA enforcement. Journal of Public Administration Research and Theory 18 (1) (Jan 2008): 33-55.

Klein, David E. 2002. Making law in the united states courts of appeals. Cambridge, UK ; New York: Cambridge University Press.

Kroeger, Naomi. 1975. Bureaucracy, social exchange, and benefits received in a public assistance agency. Social Problems 23 (2): 182-96.

Langer, Laura. 2002. Judicial review in state supreme courts : A comparative study / laura langerAlbany : State University of New York Press.

Lindquist, Stefanie A., Susan B. Haire, and Donald R. Songer. 2007. Supreme court auditing of the US courts of appeals: An organizational perspective. Journal of Public Administration Research and Theory 17 (4) (Oct 2007): 607-24.

Lindquist, Stefanie A., Wendy L. Martinek, and Virginia A. Hettinger. 2007. Splitting the difference: Modeling appellate court decisions with mixed outcomes. Law & Society Review 41 (2) (Jun 2007): 429-55.

Lipsky, Michael. 1980. Street-level bureaucracy : Dilemmas of the individual in public services / michael lipskyNew York : Russell Sage Foundation.

Liptak, Adam. 2007. For federal prosecutors, politics is ever-present.(week in review desk)(THE NATION).

Lowi, Theodore J. 1979. The end of liberalism : The second republic of the united states / theodore J. lowi. 2d ed.. ed.New York : Norton.

Lubbers, Jeffrey S. 1997. The administrative law agenda for the next decade. Administrative Law Review 49 (1): 159-69.

Lustig, Stuart L., Sarah Kureshi, Kevin L. Delucchi, Vincent Iacopino, and Samantha C. Morse. 2008. Asylum grant rates following medical evaluations of maltreatment among political asylum applicants in the united states. Journal of Immigrant and Minority Health 10 (1) (Feb 2008): 7-15.

MacDonald, Jason A., and William W. Franko Jr. 2007. Bureaucratic capacity and bureaucratic discretion. American Politics Research 35 (6) (Nov 2007): 790.

Maestretti, Danielle. 2008. ASYLUM DENIED: A refugee's struggle for safety in america. Utne. Jul/Aug 2008.

Maltzman, Forrest. 2000. Crafting law on the supreme court : The collegial game / forrest maltzman, james F. spriggs II, paul J. wahlbeck, eds. James F. Spriggs, Paul J. WahlbeckCambridge, UK ; New York : Cambridge University Press.

Maynard-Moody, Steven. 2003. Cops, teachers, counselors : Stories from the front lines of public service / steven maynard-moody and michael musheno, ed. Michael C. MushenoAnn Arbor : University of Michigan Press.

Maynard-Moody, Steven, and Michael Musheno. 2000. State agent or citizen agent: Two narratives of discretion. Journal of Public Administration Research and Theory 10 (2): 329-58.

Mcbride, Michael J. 1999. Migrants and asylum seekers: Policy responses in the united states to immigrants and refugees from central america and the caribbean.International Migration 37 (1): 289-317.

McCarthy, Colman. 2008. The game of refugee roulette. National Catholic Reporter 44 (18) (May 2, 2008): 24.

Mccarty, Nolan M., and Keith T. Poole. 1995. Veto power and legislation: An empirical analysis of executive and legislative bargaining from 1961 to 1986. Journal of Law, Economics, & Organization 11 (2): 282-312.

Mccubbins, Mathew D., and Thomas Schwartz. 1984. Congressional oversight overlooked: Police patrols versus fire alarms. American Journal of Political Science 28 (1): 165-79.

McCubbins, Matthew D., Roger G. Noll, and Barry R. Weingast. 1987. Administrative procedures as instruments of political control. (conference on the law and economics of procedure). Journal of Law, Economics, & Organization 3 (2): 243-77.

McKeever, Claire. 2005. Waiting for asylum. Sojourners Magazine. Aug 2005.

Meier, Kenneth J., and John Bohte. 2001. Structure and discretion: Missing links in representative bureaucracy. Journal of Public Administration Research and Theory 11 (4) (Oct 2001): 455-70.

Meier, Kenneth M., and John Bohte. 2003. Span of control and public organizations: Implementing luther gulick's research design. Public Administration Review 63 (1) (Jan/Feb 2003): 61-70.

Meier, Kenneth J., and Laurence J. O'Toole. 2006. Political control versus bureaucratic values: Reframing the debate. Public Administration Review 66 (2): 177-92.

Mete, Mihriye. 1999. Bureaucratic behavior in strategic environments: IRS, politicians and the taxpayers. Ph.D., State University of New York at Stony Brook.

Miller, Gary J., and Terry M. Moe. 1983. Bureaucrats, legislators, and the size of government. The American Political Science Review 77 (2): 297-322.

Miller, George A. 1967. Professionals in bureaucracy: Alienation among industrial scientists and engineers. American Sociological Review 32 (5): 755-68.

Mishler, William, and Reginald S. Sheehan. 1996. Public opinion, the attitudinal model, and supreme court decision making: A micro-analytic perspective. The Journal of Politics 58 (1) (Feb 1996): 169.

Mousin, Craig B. 2003. Standing with the persecuted: Adjudicating religious asylum claims after the enactment of the international religious freedom act of 1998.Brigham Young University Law Review 2003 (2): 541-92.

Musalo, Karen. 2010. A short history of gender asylum in the united states: Resistance and ambivalence may very slowly be inching towards recognition of women's claims. Refugee Survey Quarterly 29 (2) (Mar 2010): 46.

Nakache, Delphine, and Francois Crepeau. 2003. The grounds of refugee protection in the context of international human rights and humanitarian law: Canadian and united states case law compared. Journal of Refugee Studies 16 (4) (Dec 2003): 444.

Niskanen, William A. 1971. Bureaucracy and representative government / by] william A. niskanen, jrChicago : Aldine, Atherton.

Nixon, David C., Robert M. Howard, and Jeff R. DeWitt. 2002. With friends like these: Rule-making comment submissions to the securities and exchange commission.Journal of Public Administration Research and Theory 12 (1) (Jan 2002): 59-76.

Nixon, David Christopher. 1997. Bureaucratic procedural discretion and institutional policy competition. Ph.D., Washington University.

Noll, Roger. 1971. The economics and politics of regulation. Virginia Law Review 57 (6): 1016-32.

North, Douglass C. 1990. Institutions, institutional change, and economic performance. The political economy of institutions and decisions; variation: The political economy of institutions and decisions. Cambridge ; New York: Cambridge University Press.

O'Connell, Sasha Cohen. 2012. Pols v. police: Bureaucratic responsiveness and the intergovernmental debate over enhanced immigration enforcement. Ph.D., American University.

O'Connell, Sasha Cohen. 2012. Pols v. police: Bureaucratic responsiveness and the intergovernmental debate over enhanced immigration enforcement. Ph.D., American University.

Olson, Mancur. 1965. The logic of collective action : Public goods and the theory of groups / by] mancur olson, jrCambridge, Mass. : Harvard University Press.

Ostrom, Elinor. 1992. Crafting institutions for self-governing irrigation systems / elinor ostromSan Francisco, Calif. : ICS Press.

Pevehouse, Jon C. 2008. While dangers gather : Congressional checks on presidential war powers, ed. William G. Howell. Princeton: Princeton, NJ, USA: Princeton University Press.

Peyrot, Mark. 1982. Caseload management: Choosing suitable clients in a community health clinic agency. Social Problems 30 (2): 157-67.

Pires, Roberto Rocha Coelho. 2009. Flexible bureaucracies: Discretion, creativity, and accountability in labor market regulation and public sector management. Ph.D., Massachusetts Institute of Technology.

Poole, Keith T. 2007. Ideology & congress / keith T. poole and howard rosenthal, eds. Howard Rosenthal, Keith T. Poole. 2nd rev. ed.. ed.New Brunswick : Transaction Publishers.

Prottas, Jeffrey Manditch. 1979. People-processing : The street-level bureaucrat in public service bureaucracies / jeffrey manditch prottasLexington, Mass. : Lexington Books.

Ramji-Nogales, Jaya, Andrew I. Schoenholtz, and Philip G. Schrag. 2007. Refugee roulette: Disparities in asylum adjudication. Stanford Law Review 60 (2) (Nov 2007): 295-411.

Randazzo, Kirk A., Richard W. Waterman, and Jeffrey A. Fine. 2006. Checking the federal courts: The impact of congressional statutes on judicial behavior. Journal of Politics 68 (4): 1006-17.

Riccucci, Norma M. 2005. Street-level bureaucrats and intrastate variation in the implementation of temporary assistance for needy families policies. Journal of Public Administration Research and Theory 15 (1): 89-111.

Rohde, David W., and Harold J. Spaeth. 1976. Supreme court decision making. San Francisco: W.H. Freeman.

Rosenblum, Marc R., and Idean Salehyan. 2004. Norms and interests in US asylum enforcement. Journal of Peace Research 41 (6) (Nov 2004): 677-97.

Rosenblum, Marc R., and William A. Kandel. 2011. Interior immigration enforcement: Programs targeting criminal aliens.

Rosenblum, Marc R., and Idean Salehyan. 2004. Norms and interests in US asylum enforcement. Journal of Peace Research 41 (6): 677-97.

Rossiter, Clinton. 1963. The american presidency / with a new introd. by D. W. broganNew York : Time, inc.

Rottman, Andy J., Christopher J. Fariss, and Steven C. Poe. 2009. The path to asylum in the US and the determinants for who gets in and why. The International Migration Review 43 (1) (Mar 2009): 3.

Rouse, Amelia Ann. 1998. Determinants of bureaucratic behavior: EPA's enforcement of the clean water acts. Ph.D., The University of New Mexico.

Ruhlen, Merritt. 1974. Manual for administrative law judges: Prepared for the administrative conference of the united states, ed. Administrative Conference of the United StatesWashington: Administrative Conference of the United States.

Salehyan, Idean. 2010. Refugees as weapons of the weak. International Studies Review 12 (4) (Dec 2010): 640-2.

Salehyan, Idean, and Marc R. Rosenblum. 2008. International relations, domestic politics, and asylum admissions in the united states. Political Research Quarterly 61 (1) (Mar 2008): 104-21.

Schmidt, Conrad Peter. 1997. Friend or foe? bureaucratic behavior and acquisition reform in the united states army. Ph.D., The RAND Graduate School.

Schoenholtz, Andrew I. 2012. Developing the substantive best interests of child migrants: A call for action.(children and immigration: A lost generation?). Valparaiso University Law Review 46 (4): 991-1018.

Scholz, John, Jim Twombly, and Barbara Headrick. 1991. Street-level political controls over federal bureaucracy. The American Political Science Review 85 (3): 829.

Schram, Sanford F., Joe Soss, Richard C. Fording, and Linda Houser. 2009. Deciding to discipline: Race, choice, and punishment at the frontlines of welfare reform.American Sociological Review 74 (3): 398-422.

Schram, Sanford F., Joe Soss, Linda Houser, and Richard C. Fording. 2010. The third level of US welfare reform: Governmentality under neoliberal paternalism.Citizenship Studies 14 (6): 739-54.

Segal, Jeffrey A., Richard J. Timpone, and Robert M. Howard. 2000. Buyer beware? presidential success through supreme court appointments. Political Research Quarterly53 (3): 557-73.

Segal, Jeffrey Allan. 2002. The supreme court and the attitudinal model revisited / jeffrey A. segal, harold J. spaeth, ed. Harold J. SpaethCambridge, UK ; New York : Cambridge University Press.

Segal, Jeffrey Allan, Harold J. Spaeth, and Sara Catherine Benesh. 2005. The supreme court in the american legal system. Cambridge ; New York: Cambridge University Press.

Shipan, Charles R. 2004. Regulatory regimes, agency actions, and the conditional nature of congressional influence. American Political Science Review; APSR 98 (3): 467-80.

Snyder, S., and B. Weingast. 2000. The american system of shared powers: The president, congress, and the NLRB. Journal of Law Economics & Organization 16 (2): 269-305.

Songer, Donald R. 2012. The dog that did not bark: Debunking the myths surrounding the attitudinal model of supreme court decision making. Justice System Journal 33 (3): 340-62.

Songer, Donald R.. 2002. American politics: Judicial review in state supreme courts: A comparative study. The American Political Science Review 96 (4) (Dec 2002): 826-7.

Songer, Donald R., and Sue Davis. 1990. The impact of party and region on voting decisions in the united states courts of appeals, 1955-1986. The Western Political Quarterly 43 (2) (Jun 1990): 317.

Songer, Donald R., and Stefanie A. Lindquist. 1996. Not the whole story: The impact of justices' values on supreme court decision making. American Journal of Political Science 40 (4) (Nov 1996): 1049-63.

Songer, Donald R., Martha Humphries Ginn, and Tammy A. Sarver. 2003. Do judges follow the law when there is no fear of reversal? Justice System Journal 24 (2): 137-61.

Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. The hierarchy of justice: Testing a principal-agent model of supreme court-circuit court interactions.American Journal of Political Science 38 (3) (Aug 1994): 673.

Songer, Donald R., and Reginald S. Sheehan. 1990. Supreme court impact on compliance and outcomes: Miranda and new york times in the united states courts of appeals. The Western Political Quarterly 43 (2) (Jun 1990): 297.

Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. The hierarchy of justice: Testing a principal-agent model of supreme court-circuit court interactions.American Journal of Political Science 38 (3): 673-96.

Songer, Donald R., and Reginald S. Sheehan. 1992. Who wins on appeal? upperdogs and underdogs in the united states courts of appeals. American Journal of Political Science 36 (1): 235-58.

Stewart, Joseph, and Jane S. Cromartie. 1982. Partisan presidential change and regulatory policy: The case of the FTC and deceptive practices enforcement, 1938—1974.Presidential Studies Quarterly 12 (4): 568-73.

Stigler, George J. 1971. The theory of economic regulation. The Bell Journal of Economics and Management Science 2 (1): 3-21.

Taratoot, Cole D., and Robert M. Howard. 2011. The labor of judging: Examining administrative law judge decisions. American Politics Research 39 (5) (Sep 2011): 832.

Taratoot, Cole D., and David C. Nixon. 2011. With strings attached: Statutory delegations of authority to the executive branch. Public Administration Review 71 (4) (Jul/Aug 2011): 637.

Taratoot, Cole, and Robert Matthew Howard. 2009. Accountability and independence: Administrative law judges and NLBR rulings. Rochester, Rochester:

Taratoot, Cole. 2013. Review of administrative law judge decisions by the political appointees of the NLRB, 1991-2006. Journal of Public Administration Research and Theory 23 (3): 551.

Taratoot, Cole D. 2014. The politics of administrative law judge decision making at the environmental protection agency in civil penalty cases. American Politics Research42 (1): 114-40.

Taylor, Margaret H. 2007. Refugee roulette in an administrative law context: The déjà vu of decisional disparities in agency adjudication. Stanford Law Review 60 (2) (Nov 2007): 475-501.

Taylor, Ian, and Josie Kelly. 2006. Professionals, discretion and public sector reform in the UK: Re-visiting lipsky. International Journal of Public Sector Management 19 (7): 629-42.

Wahlen, Carol. 1990. Homeowners demonstrate need for public water lines. Milwaukee Journal, Nov 16, 1990, 1990.

Waibsnaider, Meital. 2006. How national self-interest and foreign policy continue to influence the U.S. refugee admissions program. Fordham Law Review 75 (1): 391-426.

Weaver, Dale, and Yeheskel Hasenfeld. 1997. Case management practices, participants' responses, and compliance in welfare-to-work programs. Social Work Research21 (2): 92-100.

Weingast, B. R., and M. J. Moran. 1983. Bureaucratic discretion or congressional control? regulatory policymaking by the federal trade commission. Journal of Political Economy 91: 765-800.

Wertkin, Jeffrey A. 2002. A return to first principles: Rethinking ALJ compromises. Journal of the National Association of Administrative Law Judges 22 (2): 365-403.

Wilson, David. 1989. Toward a revised urban managerialism: Local managers and community development block grants. Political Geography Quarterly 8 (1): 21-41.

Wilson, Woodrow. 1887. The study of administration. Political Science Quarterly 2 (2): 197-222.

Wood, B. D. 1994. Bureaucratic dynamics: The role of bureaucracy in a democracy / B. dan wood, richard W. waterman, ed. Richard W. WatermanBoulder : Westview Press.

Wood, B. D. 1988. Principals, bureaucrats, and responsiveness in clean air enforcements. The American Political Science Review 82 (1): 213-34.