A Critique of "The Louisiana Supreme Court in Question: An Empirical and Statistical Study of the Effects of Campaign Money on the Judicial Function"

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Palmer and Levendis' (2008) offer a rather confusing and contradictory paper on the impact of campaign contributions on voting behavior by Louisiana Supreme Court justices. The first two sentences provide a very good example of the paper's fundamental flaws. The first sentence asserts that no literature exists to guide their study, ignoring over twenty-five years of scholarly work directly related to the question of interest. The second sentence provides the paper's central thesis that it supplies statistical evidence that contributions influenced justices. Yet a careful reading of the literature suggests that this paper contains no such evidence. In an even more puzzling twist, footnote 14 of the Palmer and Levendis' (2008) paper states that it will assert no such causal relationship.

The first step in any academic study is a careful review of the relevant literature. The first sentence of Palmer and Levendis' (2008) paper (hereafter referred to as P&L) begins with the observation "The effect of campaign contributions on judicial decision making has been the subject of the widespread interest and debate, but little empirical research." Like much of the paper, the first sentence entirely misses the mark. In fact, there is a very large literature in economics investigating the impact of campaign contributions on the decisions of recipients. Understanding the problems with Palmer and Levendis (2008) requires first placing it in the context of the literature.

While most of the extant evidence comes from empirical research on the relationship between campaign contributions and decisions of legislators, the methodological issues are identical for examining the same relationship with respect to decisions made by judges. Beginning with Chappell's (1982) seminal paper, the accepted approach for empirical research on this topic must explicitly recognize the probable simultaneity between the effect of campaign contributions on judicial decisions and the effect of judicial decisions on campaign contributions.[2] His paper is of particular importance because it points out a fatal flaw in the P&L analysis and points to the appropriate methodology the authors should have employed for estimation of this type of model. The necessity of addressing the simultaneity issue was explicitly stated in an influential study by Stratman (1995), which states in the introduction:

> "All studies addressing the question of whether campaign
> contributions influence congressional voting behavior must address

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[2] Chappell's contribution is the first article to appear when one searches Google scholar under "contributions" and "voting." As of this writing, Google scholar shows 130 citations to Chappell's article. Many subsequent studies use his methodology and a number of those appear in the top rated journals in both economics and political science.

the issue of whether campaign contributions are endogenous in the vote equation. The issue is whether contributions influence the voting behavior or whether the expected voting behavior influences contributions." (p. 127).

This mandate applies equally to all studies addressing the question of whether campaign contributions influence the decisions of judges. Thus, both studies seriously call into question P&L's conclusion of a causal link between contributions and judicial decisions. After Chappell's work, essentially every serious work on the topic must address the fact that there are at least two relationships of interest, not one as the Tulane Law Review article implies. Any serious attempt to address the impact of contributions on the decisions of judges must use econometric techniques that recognize the two-way causality. Assuming away the simultaneity issue, as P&L implicitly have done, represents a fundamentally fatal error in their analysis. The possibility that differences among judges in their decisions or judicial philosophies can influence how campaign contributions are distributed is conceptually identical to the influence legislator's have on the distribution of campaign contributions. This has been well-recognized in economics for decades. For example, Grier and Munger (1986) show that specific characteristics of individual legislators attract contributions from some, but not necessarily all interest groups. That is, interest groups that value certain characteristics contribute to the campaign of legislators who possess those characteristics.

With just a cursory review of the literature, P&L would have found these studies and would have been aware of Stratman's view that *all* studies *must* address this issue as central to their analysis. Their failure to even cite these studies, much less address the key issue, reveals a fundamental flaw in their study. However, that is not the only important issue raised by the P&L paper. Many economic studies can miss a key item in the literature or err in methodology. But, over time, subsequent research corrects the errors if the study is deemed interesting *or* research scholars may simply ignore the study, which implicitly deems it as having little value to the discipline.

However, P&L paper is not the typical academic study. The methodology chosen by Palmer and Levendis, which entirely ignores the simultaneity issue, focuses on voting by specific justices in the Louisiana Supreme Court. The authors conclude that contributions influenced the voting behavior of two justices in particular, and suggest that it is also true for the entire Court. By naming specific Justices and incorrectly asserting that they have produced statistically valid evidence that campaign contributions influenced decisions of the Louisiana Supreme Court, the author's risk tarnishing the reputations of longstanding Judges with no scientifically valid evidence to support their claims. In this case, the profession's process of simply ignoring poor scholarship or correcting it over time cannot prevent the immediate damage to reputations that the P&L study will produce under the guise of academic research.

The critique proceeds by first discussing the problems in Palmer and Levendis (2008) methodology. We then focus on conclusions drawn by the authors and the

language used to describe results. Finally, we turn to the issue of publication and offer suggestions for a better review of similar articles for publication at a Law Review.

Problems in the Palmer and Levendis Methodology

The key problem in the Palmer and Levendis' methodology is that they fail to adequately model the contributor's decision to donate to campaigns. In fact, the results in Palmer and Levendis fall apart under closer inspection. To understand the problem, suppose Palmer and Levendis had performed a similar study focusing on whether U.S. Supreme Court Justices were unduly influenced by the support of pro-life or pro-choice groups during confirmation hearings. It would come as no surprise to find that the Christian Coalition and other pro-life groups supported (contributed heavily) to justices such as Clarence Thomas, while pro-choice groups voiced opposition to Justice Thomas but showed support (contributed heavily) for Justice Ruth Bader Ginsburg. When one later looks at voting records by Justices, the status of plaintiff and defendant may vary. However, regardless of the plaintiff and defendant in the case, Justice Thomas is more likely to favor restricting abortion rights than Ginsburg. Does this imply that the Justices decisions are unduly influenced by support of pro-life or pro-choice groups during the confirmation hearings? No, it simply shows that the judicial temperament and philosophy of justices on this one issue were known by the two groups and therefore influenced their support decisions.

Chappell's (1982) seminal article pointed out that the same idea holds for campaign contributions. If the U.S. Supreme Court were elected and received campaign contributions, would one really expect pro-life groups to contribute to Justice Ginsburg? If not, then one is sure to only observe financial contributions to Justice Ginsburg's campaign by pro-choice groups. However, the fact that Justice Ginsburg tends to rule in favor of pro-choice positions has nothing to do with unfair influence by contributors. It just reflects the fact that the Justice votes as anticipated in those cases. Therefore, it seems reasonable to conclude that it was her "voting behavior" that *influenced* the decisions of contributors. Furthermore, it is naïve, at best, to assume that one can control for Judicial philosophy across a broad range of issues on the basis of the number of times a justice rules for the plaintiff or defendant.

If only a very small number of cases fall into the category discussed above, P&L's results would evaporate. To see this, consider the results for Judge Kimball in Table 3. Note that P&L make much of the fact the Justice Kimball voted for the defendant in 24 of 36 cases (67%) where a contributor is involved and only 52% of cases where a contributor was not involved. For simplicity, let's round the 52% to 50% and make the Palmer and Levendis case a bit stronger.

Assume that there are two types of cases. Type A is a case where Justice Kimball's decision could not be predicted by contributors based on her judicial philosophy. Type B is a case where Justice Kimball's position could have been predicted based on judicial philosophy, much as Justice Thomas' votes on abortion issues might be predictable. How many of the latter type cases would be necessary to explain the results

in Table 3? In a deterministic world, the results in Table 3 would require that there were 24 Type A cases involving contributors where Justice Kimball's vote could not be predicted and another 12 Type B cases where contributors could have anticipated. This leads to 12 votes of 24 in favor of the defendant in Type A cases and another 12 Type B cases.

However, as the author's correctly note, there is an element of randomness in the cases that one should take into account. When one allows for randomness, a quick check of the binomial distribution reveals that it would not be surprising to find 18 out of 30 cases (60%) in favor of the defendant, even if the probability of ruling for the defendant in any single case is .5. Thus, when one accounts for randomness, Justice Kimball's voting record can be explained by only six Type B cases where contributors could have anticipated her opinion. In essence, the P&L's statistical evidence falls apart if Justice Kimball's voting behavior were predictable in 6 of the 94 cases that were included in this sample.[3] If Chief Justice Roberts had been an elected judge at some point in his career, results such as these would not be at all surprising.

Given the discussion above, the past literature in economics, and our own priors about judicial temperament, it is not surprising that P&Ls find positive correlations between contributions and votes. The logit results also suffer from the same criticism as those in Table 3. Fortunately, Chappell's (1982) study developed the appropriate econometric tools to address this issue, which was extended in later work such as Stratman (1995). While the description of the construction of the data set and the specification of the logit model in Palmer and Levendis is vague, it is clear that they relied on a single equation logit model. This is the fatal flaw in their methodology.

To understand the problem, note that Palmer and Levendis use a specification similar to the single equation specification of Durden and Silberman (1976). Chappell's seminal paper was to a large extent written as a critique of the Durden and Silberman study. In essence, Chappell noted that randomly assigning contributors to a candidate ignores the fact that donors tend to contribute to candidates with a similar viewpoints. To use our earlier analogy, pro-choice groups would only contribute to candidates viewed as supporting the pro-choice position. Econometrically, this means that the level of contributions is jointly endogenous and mandates the estimation of a second equation.

Chappell correctly addresses the econometric problems using a logit-Tobit approach. Using data from several congressional votes, Chappell's shows that the single equation model is biased. In Chappell's words:

> "FIML estimates of the simultaneous probit-Tobit model suggest that the effects of campaign contributions on voting are smaller than single equation probit estimates would indicate. We are generally unable to conclude that contributions have a significant impact on voting decisions; apparently votes are most often decided on the basis

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[3] The results for Justice Weimer can also be explained by only six predictable votes. However, it should be noted that there are fewer of Weimer's cases included in the study.

of personal ideology or the preferences of constituents. These findings differ markedly from Durden and Silberman, whose single equation models showed a substantial impact of contributions on voting decisions."

The findings of Chappell and sample size of the Palmer and Levendis study strongly suggest that all of the evidence of a relationship between contributions and voting by justices would disappear if the correct probit-Tobit specification was used. Given the standard econometric approaches at the time and computing power available, Durden and Silberman's estimation of a single equation model was to be expected. However, Palmer and Levendis' choice of an almost identical single equation model over 40 years later is inexcusable.

Less troubling results in Palmer and Levendis' study might be found in Table 5. Though Stratman's work is not cited, P&L do come to a similar conclusion—timing of contributions may matter. That is, more recent contributions might have a larger impact on voting behavior than contributions made in the past. Stratmann used a three equation model – a probit equation for voting and two Tobit equations for predicting the contributions of donors during the year of the vote and the two years prior to the vote.

Palmer and Levendis note that 37 contributions in their data set occurred within one year of a decision. Though Stratman's methodology used a system of three equations, his work does offer hope that a single equation model using recent contributions might provide useful results. However, instead of using only those contributions within the last year, Palmer and Levendis use all 157 contributions over a 14 year period (1992 to 2006), and simply discount contributions using a 5% discount rate. This methodology makes it impossible to determine whether the results are driven by 37 recent contributions or the 123 older contributions, particularly since the timing of contributions is likely to vary across Justices.

Interestingly, Palmer and Levendis issue a rather puzzling disclaimer in footnote 14 of their paper related to this issue. Footnote 14 of P&L states:

"It is worth observing that this article does not claim that there is a cause and effect relationship between prior contributions and judicial votes in favor of donors' positions. It asserts instead that there is evidence of a statistical correlation between the two."

In layman's terms this footnote states that the authors make no assertion with regard to whether the correlations imply that contributions affect voting behavior or instead simply reflect the fact that contributions tend to flow to those that share the donor's point of view. Apparently the authors completely miss the significance of this footnote. ***To any trained econometrician, this footnote states that the article makes no assertion that it contains statistical evidence that contributions affect voting behavior of justices.***

In light of footnote 14, the rest of the paper is completely confusing. The majority of the paper either implicitly or explicitly interprets statistical correlations as implying a causal relationship where donations influence voting. If P&L were really taking an agnostic position on causality, the paper should clearly discuss the alternative explanation discussed above. Given that footnote, all results should be discussed in terms of both possible explanations.

P&L's repeated assertions that donations influence voting behavior directly contradict footnote 14. In light of these assertions, it is very surprising that P&L do not employ the logit-Tobit model that was introduced by Chappell (1982) over twenty five years ago to test for evidence of such a causal relationship.

Conclusion

This critique evaluates the Palmer and Levendis' (2008) Tulane Law Review article which asserts that it contains evidence that campaign contributions have influenced voting behavior of Louisiana Supreme Court Justices. The key goal of this critique is to point out a very fundamental flaw in P&L and to point other scholars to the appropriate literature describing the correct way to do a study of this sort. Chappell's (1982) seminal work and later work by Stratman (1995) provide the basic methodology for this type of research.

The P&L paper is written as if the authors are discovering new problems and attempting to address them using a new approach. In fact, economists recognized these problems over 30 years ago and developed solutions, which have been thoroughly vetted in leading journals.

Palmer and Levendis' (2008) failure to investigate the literature leads them to employ "modern statistical analysis"[4] that Chappell (1982) dismissed over twenty five years ago as inadequate for this problem. The authors' seem to grasp this problem in footnote 14 where they note that their paper will make no assertion with regard to causality. In essence, footnote 14 states that Palmer and Levendis (2008) will not interpret results found in the paper as implying that contributions influence voting behavior. Yet, they repeatedly make exactly the assertion that footnote 14 of their paper correctly acknowledges cannot be made on the basis of the statistical techniques employed in the paper.

In summation, Palmer and Levendis' (2008) failure to investigate this literature leaves them with an article consisting essentially of totally invalid statistical results and unsubstantiated assertions. We hope that future research using more careful econometric analysis might be able to provide more useful evidence on the topic of interest.

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[4] Palmer and Levendis (2008), Tulane Law Review, page 1314.

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