

Career, Gender and Political Bias in Pretrial Decisions on Gender Violence: Evidence from a natural experiment *

Joan-Josep Vallbé *Department of Political Science, University of Barcelona*

Carmen Ramírez-Folch *Department of Political Science, University of Barcelona*

The aim of this paper is to provide an explanation of the variation in lower pretrial court judicial decisions over gender-violence cases, under a civil-law system. Despite the typical anonymity of lower-court judges in such legal systems, we are able to exploit a natural experiment in Spain that allows us to estimate the effect of judges' gender, career incentives, and policy preferences on decisions on restraining orders for victims of gender violence. Although the literature has found ample evidence of gender and ideology effects on judicial behavior when women's rights are at stake, we argue that due to career and promotion dynamics, career incentives moderate the effect of gender and policy preferences on such decisions. We find that the probability to grant a restraining order to a victim is higher among female judges than male judges, and that left-leaning judges also tend to grant restraining orders at higher rates. However, we also observe that these mechanisms are moderated by career incentives, to the point of blurring their effects when career pressures are high. These findings are a relevant contribution to the understanding of the mechanisms behind judicial inequality under civil-law systems, where judges' attributes tend to be unobservable by institutional design.

1 Introduction

Ever since the first empirical analyses of judicial politics, research in the determinants of the behavior of judges (e.g., gender, race, career interest or ideology) has been biased in at least three ways. First, studies have been overwhelmingly focused on the behavior of U.S. judges, with just a few exceptions from other common-law countries (Hanretty, 2013) and just a handful of studies from civil-law countries such as Germany (Schneider, 2005) or Spain (Garoupa, Gómez-Pomar and Grembi, 2013). The reasons behind this include an earlier female incorporation to the bench in several common-law countries; the way judges are selected (in the U.S. they can be appointed by politicians or even voted by

*Corresponding author: Joan-Josep Vallbé (vallbe@ub.edu). The project leading to these results has received funding from "la Caixa" Banking Foundation under the project code SR19-0208, GENEQUAL-"The Political Economy of Gender and Inequality in the Spanish Judiciary".

citizens, while in civil-law countries they must pass a competitive exam); and career-related aspects of the job (in civil-law countries, trial court judges are civil servants and must hold a law degree, while neither of these requirements are necessarily the case in the U.S.). The second source of bias can be found in the fact that because of the political and salient nature of the selection process of higher courts, most research has focused on the behavior of judges from Supreme, Constitutional, or Appellate courts, thus leaving unexplored the study of the massively larger share of lower, pretrial or trial courts and judges. Thirdly, the vast majority of research exploring the effect of gender or ideology on judicial decisions intend to untangle the causal effect of the interest variables through only a weak regard of the conditions required to make such causal claims. Importantly, random treatment assignment is almost impossible to comply with when exploring the behavior of higher court judges, because they may have certain control over their dockets or have been appointed due to their political profile, and then case allocation may well be endogenous to judges' own characteristics, thus raising problems of reverse causality.

Therefore, students of judicial politics have an extensive and thorough knowledge about whether and in what way certain individual characteristics of judges affect their behavior in common-law upper court contexts, but it is not clear whether the same results hold in lower courts of countries under the civil-law tradition.

This paper intends to test individual gender, ideology, and career effects in lower pre-trial courts in Spain. Apart from helping to better understand the determinants of judicial behavior in a largely unknown context (due to both the type of legal system and court level), the paper makes two further contributions to judicial politics. On the one hand, lower pretrial judges in Spain are not politically appointed but must pass a competitive exam purely based on legal knowledge, after which they become civil servants with life tenure. This typical feature of civil-law systems helps depicting judges as anonymous decision makers with completely unobservable ideology or policy preferences. Through an indirect strategy, this paper is able to measure pretrial judges' policy preferences. On the other hand, the analysis is framed as a natural experiment, because under certain conditions, Spanish lower pretrial courts present random assignment of cases to judges in districts, thus allowing our identification strategy to exploit this random distribution to estimate the causal effects of gender, career incentives and ideology on judicial decisions.

The next section is devoted to briefly review the main approaches to judicial behavior, inserts our analysis within the strategic model, and outlines our main argument and expectations. Section 3 presents the data and explains the identification strategy, while the main empirical results are presented in Section 4.

2 Theory

2.1 Related literature

The analysis of judicial behavior has produced three main models to explain the determinants of judicial decisions (Segal and Spaeth, 2002; Segal, 2008; Dyevre, 2010). The so-called *legal model* looks for the legal grounds of decisions made by judges because it assumes that legal factors are at the core of decisions that determine court outcomes, although some recent works give a more realistic account of decision-making under uncertainty, which has brought some of these scholars to explore the role of heuristics and informational cues in judicial decisions (Gigerenzer and Goldstein, 1996; Dhami, 2003; Vallbé, González-Beilfuss and Kalir, 2019).

In contrast, the *attitudinal model* sees judges as policymakers and looks for the influence of their policy preferences on their decisions (Segal and Spaeth, 2002). Studies that have found ideology (or nominating party) effects on decisions have focused on courts dealing with either controversial or value-laden cases, as is typically the case of supreme courts in common-law systems (Segal and Cover, 1989; Weinshall Margel, Sommer and Ritov, 2017) and constitutional courts of civil-law systems (Hanretty, 2012; Garoupa, Gómez-Pomar and Grembi, 2013), although some examples of ideological voting has been found in lower courts of common-law (Keith, Holmes and Miller, 2013; Sunstein et al., 2007; Geyh, 2016).

However, judicial decisions are not made in an institutional vacuum (Dyevre, 2010), and a third stream of judicial behavior literature—referred to as *strategic* or *labor-market model* (Epstein and Knight, 2000; Hettinger, Lindquist and Martinek, 2004; Posner, 2008; Epstein, Landes and Posner, 2013)—provides a more complete, systematic account of the judicial utility function within the rational choice framework. From this perspective, judges may decide based on their assessment of the consequences their (or others') decisions will have on their preferred policies (Epstein and Knight, 2000), group-based interests (Gazal-Ayal and Sulitzeanu-Kenan, 2010), career agenda (Bergara, Richman and Spiller, 2003), or even other elements of judges' utility function that may be relevant to them and thus affect their behavior (e.g., their preferences on leisure time).

In this latter context, studies seeking to identify gender effects on judicial behavior have found only partial support in the data. In general, the idea that male and female judges “speak different voices” and that these are reflected in different judicial behavior (Boyd, Epstein and Martin, 2010) has hardly passed empirical scrutiny, except in cases where the rights of women are clearly at stake, which female judges tend to decide distinctly from male judges (Segal, 2000; Boyd, 2016). In cases where the “women’s issues”

label is not clearly applicable, results are less conclusive.

Since the seminal article by Boyd, Epstein and Martin (2010) there is agreement that the reasons behind these unclear results are largely methodological. On the one hand, most research on the estimation of the causal effect of gender on judging is doomed by its inability to ensure random assignment of treatment, given that case allocation among upper trial or appellate judges is almost never random. In order to deal with this problem, Boyd, Epstein and Martin (2010) applied non-parametric matching techniques to ensure a proper comparison of treatment-outcome pairs and therefore to allow for unbiased causal effects to be estimated. On the other hand, the extent to which gender effects on judging are only to be found when cases involve “women’s issues” faces another potential problem in the way “women’s issues” are defined and measured. There are two common strategies on this (Boyd, Epstein and Martin, 2010). First, authors may decide to test gender effects on cases that hardly have any gender-related connotation (e.g., tax law (Schneider, 2001)) and include a dummy variable for the gender of the applicant. The mechanism behind this design seems to be that female judges may decide more for female applicants than male judges. The second strategy is very similar to the former, except for the fact that the cases selected *do* have gender connotations (e.g., workplace discrimination (Boyd, 2016)). This second strategy has received more empirical support than the former (Boyd, Epstein and Martin, 2010).

However, there is also a theoretical problem affecting works on gender effects. As a large corpus of works that examine the behavior of judges has focused on high courts (e.g., the U.S. Supreme Court), they depict scenarios where gender parity is rare (Farhang and Wawro, 2004; Crowe, 1999). This has often caused literature to treat women as “tokens”—a minority in a field of study and professional practice dominated by men (Martin and Pyle, 2005). As a consequence, a theoretical assumption underlying this literature is that gender will produce a distinct behavior just on female judges, especially on gender-related cases—cases that are potentially relevant for female judges who are aware of so-called “gender issues”. This bias thus frames the behavior of male judges as “default” while the behavior of female judges is presented as a deviation from normality. Assuming that women are the only “group” on whom gender has an effect is the result of perceiving female judges as the minority group who will make decisions to protect their group’s interests or even as an unconscious bias, which assumes that male judges are somehow gender-neutral in their decisions—i.e., that they will not tend to identify with male defendants. This issue, which has been pointed out for studies exploring race effects (Gazal-Ayal and Sulitzeanu-Kenan, 2010), has been largely overlooked referring to gender, with the exception of Ash et al. (2021). We understand gender as an

identity mechanism and as such it can produce in-group bias—judges may favor those defendants or victims who match their identities. The existence of this mechanism and its consequences on inequality have been empirically tested on numerous fields such as career choice (Correll, 2001) or labor-market discrimination (Rudman et al., 2012; Menés and Rovira, 2019). Very recently Ash et al. (2021) have tested it the outcomes of criminal courts in common-law India, where the presence of female judges is very limited. Yet, its effects in lower courts with a more balanced gender distribution and under a civil-law system is unexplored. This study contributes to the literature focusing on lower courts in Spain, where the percentage of female judges is higher than that of male judges.

Regarding the combined effect of gender and ideology on judicial behavior, a relevant limitation in the literature comes from the fact that it has focused on the behavior of higher or appellate court judges. Given that the ideological composition of these upper courts can be dependent on the preferences of the Federal or state appointing body, the inclusion of ideology in gender-effects models is plagued with endogeneity problems, and with just a few exceptions (Tiede, 2008) it has only been used as a control variable. As a consequence of these limitations, the potentially fruitful exploration of the effect of ideology on gender (or viceversa) to explain judicial behavior has rarely been explored in this context, although the theoretical frameworks supporting both independent variables have much in common.

Finally, in order to consider how career incentives affect the way judges decide, it has been useful to integrate the analysis under the principal-agent framework used in economics (Macho-Stadler and Pérez-Castrillo, 1997; Westerland et al., 2010; Przeworski, 2003) to model the judge as a government employee—i.e., an agent to the government, which is the principal. Therefore, judges behave according to a number of incentives and constrains, some of which are personal (gender, policy preferences, career interests) while others are imposed by the principal (capacity to reverse decisions made by lower courts, judicial appointment) (Epstein et al., 2007; Clark, 2008). Given that judges in both civil-law and common-law democracies enjoy a certain degree of discretion provided by their tenure and by the lack of exogenous imposition of specific rules for their decision-making, they have been described as imperfect agents of a diffuse principal (Posner, 2008; Epstein, Landes and Posner, 2013).

The principal-agent framework has proved fruitful to model judicial behavior mainly because of hierarchy. In large bureaucratic organizations, public or private, the delegation of work and responsibilities yields to information asymmetries and creates agency problems (Bolton and Dewatripont, 2005). In the judicial system, these tensions arise because (1) upper courts can reverse the decisions made by lower courts (Haire, Lindquist

and Songer, 2003), and (2) lower court judges have incentives to be promoted to upper courts positions (Black and Owens, 2015). However, usually it is the case that reversals and judicial appointments are not made by the same courts. This sets a structure of incentives that may have different effects (and may be even cross-cutting) at different levels of the judicial hierarchy and that may blur the effect of gender and ideology on judicial decisions. Thus under this model a combined effect of background, ideology and career incentives is not only possible but expected in certain contexts, especially as judges move up the judicial ladder (Farhang and Wawro, 2004; Epstein, Landes and Posner, 2013).

2.2 *Background: Decisions on gender violence in Spain*

The Spanish judicial system consists of three distinct levels: 2,600 pretrial courts (courts of first instance and of inquiry), 1,000 trial courts, which try cases, 16 regional courts of appeals; and the Supreme Court, which has the last word on appeals. Moreover, the Judicial Council (Consejo General del Poder Judicial, CGPJ) is an agency with powers to appoint, promote and discipline the members of the judiciary. 60% of members of CGPJ are directly appointed by the Spanish parliament (i.e., government), and 40% are elected by judges themselves among peers. In the last 15 years the CGPJ has been overwhelmingly conservative. This double hierarchical structure induces judges at different levels “to consider how their decisions will be received by other actors within the system” (Zorn and Bowie, 2010), whether these actors are other courts or politicians.

At the bottom of the system, there are lower courts, which include both pretrial and trial courts. In 2004 the Spanish government created courts specialized in gender violence at the lower-court level. These have exclusive competence to process all incoming cases related to gender violence and to carry out pretrial preliminary investigation of these cases. These courts were established only in more populated areas, while in rural areas (the vast majority of judicial districts in Spain) these duties were assigned to one of the regular lower courts already in place. Appointments to these courts are made on the same grounds as in regular pretrial lower courts—they are decided by the CGPJ based on merits and seniority. One of the most effective measure to protect victims in pretrial procedures of gender violence is the restraining orders. These orders can be taken when there is strong evidence of the commission of crimes or misdemeanors of gender violence and in cases where there is an objective situation of risk to the victim. When the order is granted by a judge, the court also activates social assistance and protection measures so that protection is effective at all levels. Given the liberty-limitation nature of this measure (aggressors have limits to their liberty to move), its effect is immediate though limited in time (usually 30 days), after which a judge must revise the case and decide again. Its

immediate but short application makes appeal rather improbable and ineffective.

Restraining orders may be taken by lower-court judges in three different scenarios. First, in those areas where a specialized gender-violence court has been established, restraining orders will be taken by their serving judges. Second, in those areas where specialized courts are not in place, judges from the courts that have been assigned the exclusive competence in gender violence will make these decisions. Finally, in both previous scenarios, if a gender-violence case is brought to court out of the ordinary opening hours of the serving court, a judge on duty will process the incoming case and can therefore decide on restraining orders. Given the typical urgency surrounding cases coming to court off regular hours, it is expected that restraining orders adopted by on-duty courts refer to critical cases. This explains why on-duty courts approve restraining orders at higher rates than ordinary courts in Spain, as shown in Figure 1 regarding the difference of rates of approval between both types of courts in Spain across time.

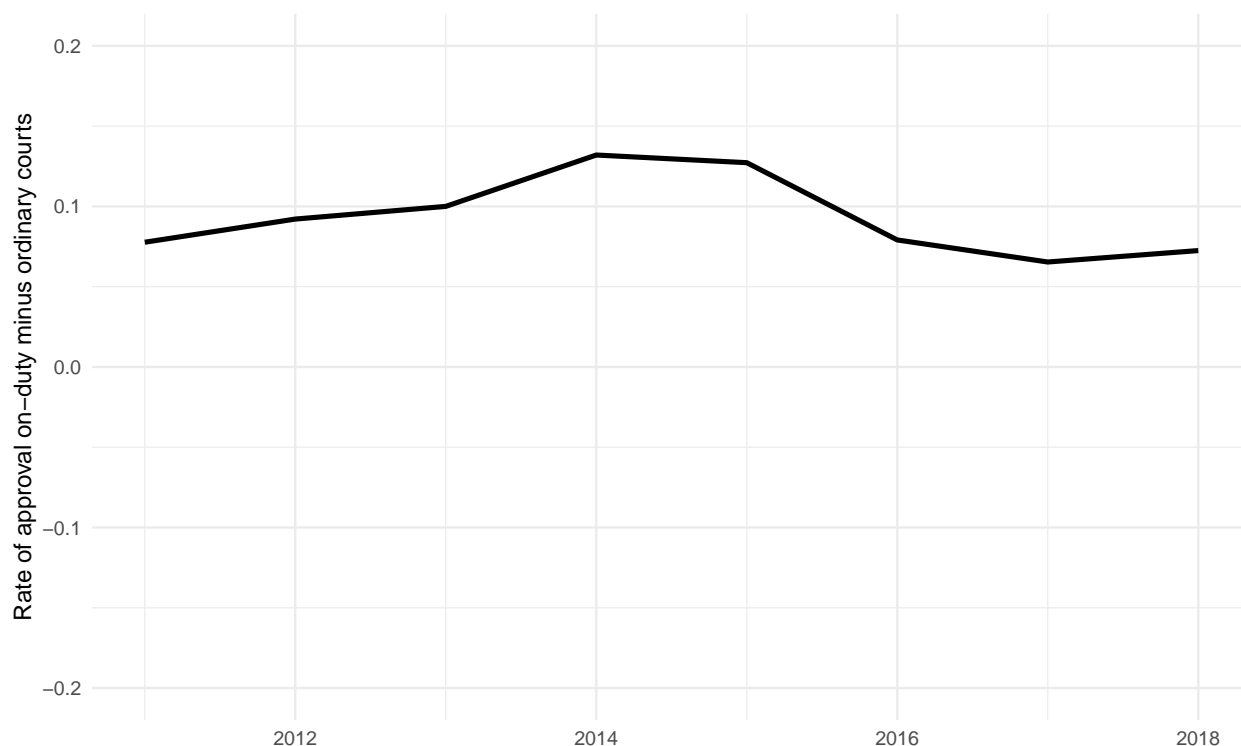


Figure 1: Rate of approval of restraining orders by ordinary and on-duty courts in Spain (2009-2018).

In this institutional context, the incentives of lower court judges are shaped by two different lines when deciding on restraining orders in gender violence. On the one hand, given that their decisions on restraining orders are unlikely to be reversed by immediately upper courts, they might not reveal reverse aversion in their behavior. But on the

other hand, their chances to be promoted are in the hands of the CGPJ, which has been dominated by the Spanish conservative party in the last 15 years. In this sense, lower court judges may have incentives to not showing too much dissent in their behavior with respect to their main principal (the CGPJ).

2.3 Policy preferences in Spanish lower pretrial courts

The very nature of civil-law legal systems makes lower pretrial judges extremely unlikely to show any public political profile, but in addition the Spanish legislation on the judiciary is very restrictive regarding the involvement of judges and prosecutors in political affairs. The Constitution (section 127) explicitly bans that either judges or prosecutors join trade unions or political parties or even that they “congratulate or reprove powers, authorities, civil servants or local entities in any of their acts in the capacity of members of the judiciary nor attend in such capacity any public meetings or acts which are not of judicial nature” (Organic Law 6/1985, of 1 July, on the Judiciary). According to this, Spanish judges should show no visible attributes.

Nevertheless, several so-called professional associations of judges have been created in the last years to collectively defend judges’ interests in matters ranging from salary reform to the role of judges in the election of judicial governing bodies. Although all these associations claim to be completely independent from any political party, the media refer to them in terms of left and right as they lean toward the two main Spanish political parties—progressive PSOE or conservative PP. The two conservative associations (Asociación Profesional de la Magistratura-APM, and Asociación Francisco de Vitoria-AFV) represent 46% of judges, while the only relevant progressive association (Jueces y Juezas para la Democracia-JpD) represents only 11% of judges. Membership to associations is not public, so the measurement of the ideology of lower court judges is extremely difficult. Moreover, around 43% of judges remain unaffiliated.

2.4 Argument and expectations

The research question behind this paper is how and in what way lower-court judges use gender and ideological mechanisms to make pretrial decisions on gender violence cases, and to what extent the structure of career incentives moderates the effect of such mechanisms.

Our first expectation is that gender in-group bias should work in gender violence cases, as female judges should empathize more with female victims (who match their group identity) than male judges, who might show higher levels of empathy toward male

defendants (i.e., aggressors):

(H1): Female judges should grant restraining orders for victims of gender violence at higher rates than male judges, all else equal.

For those judges with expectations of advancement in their judicial career, lower courts are only the starting point. Past evidence shows that at early stages of their career, judges feel less secure about taking discretionary decisions, especially when they are on duty (Vallbé, 2015), and thus their decisions tend to be more bound by rules and grounded on legalistic terms (Epstein, Landes and Posner, 2013) because they are less prone to the discretionary use their attitudes and values to make decisions (Martin and Pyle, 2005). Moreover, as professional experience grows and judges remain working in lower courts, their prospects of promotion decline, as does career pressure. According to this, we should expect that the rate of approval of restraining orders should grow with professional experience:

(H2): More experienced judges should grant restraining orders for victims of gender violence at higher rates than less experienced judges, all else equal.

Traditionally, promotion is a steeper path for female than male judges. Although female judges already represent 66% of judges below 40 years old, 57.5% of judges between 41 and 50 years old and 40% of those who are between 51 and 60, female judges represent 70% of judges serving in lower courts, but less than 40% in provincial-based trial courts, and only 13% in the Supreme Court (CGPJ, 2016). Some studies suggest that because women are less likely to advance in the judicial career, they tend to decide more in line with their personal preferences (e.g., gender bias) (Brudney, Schiavoni and Merrit, 1999), while others argue that judges in high courts—i.e., with long professional careers—, tend to decide in accordance with their professional preferences because they no longer have expectations of further advancement (Martin and Pyle, 2005). Due to this, we expect that the effect that female judges are more sensitive to the marginally declining effect of career pressure. Therefore:

(H3): The rate of approval of female judges should grow more rapidly with experience than among male judges, all else equal.

The second bias mechanism of interest here is ideology, and we should expect it to have an overall effect in judicial behavior, to the effect that left-leaning judges should decide more in favor of the victim than right-leaning judges:

(H4): Left-leaning judges should grant restraining orders for victims of gender violence at higher rates than male judges, all else equal.

However, according to our general model we also expect to find that professional experience moderates the effect of ideology as it moderates the effect of gender in-group bias. According to this, leftist judges will be less prone to base their decisions on their ideology at early stages of their career, while ideology will be more used at later stages when career pressures decline:

(H5): Left-leaning judges should grant restraining orders for victims of gender violence at higher rates at later stages of their career, all else equal.

3 Data and identification strategy

In order to test these hypotheses, we use data on decisions made by lower pretrial court judges in Spain. The choice of court level (the lowest possible) and country (of civil-law tradition) is a relevant contribution to the existing literature, but it also faces a number of challenges. In what follows we explain how this paper deals with these challenges and also the choice of data to test the hypotheses.

3.1 Data set

Our data set with contains decisions over all restraining orders from cases of gender violence decided by Spanish pretrial on-duty courts for the years 2011 to 2018. The origin of these data is three-fold. On the one hand, there is the official database of Spain's Consejo General del Poder Judicial (CGPJ), which provides the number of restraining order petitions granted and denied each year by each court in Spain while on duty. On the other hand, every two years the CGPJ publishes the current ranking (*escalafón*) of the Spanish judiciary (based on seniority), which establishes each judge's position for promotion in the following two-year period. From this we extracted which judges were serving which courts every two years, along with each judge's gender (deduced from their name), experience, and current serving court.¹ Finally, in order to gather information about judges for those years without *escalafón*, we scrapped the State Official Register (*Boletín Oficial del Estado*) and identified all promotions and court changes for all Spanish judges within the period. After joining the three data sets, we expanded the rows of the resulting data set

¹Although the CGPJ publishes the judicial ranking every two years, the one corresponding to 2015 was published in 2016 and then continued on 2018, thus breaking the two-year pattern ever since.

so that each row represented one judge-year-decision. The outcome variable (decision) takes value 1 if a judge grants a restraining order and 0 if he/she denies it.

In 2015, Spain's main progressive judicial association (Jueces y Juezas para la Democracia-JpD) issued a statement that threw very strong accusations to the then minister of Justice (Alberto Ruiz Gallardón), a member of the conservative (Partido Popular) government of Mariano Rajoy. The statement's main purpose was to criticize the existence and functioning of centers of preremoval detention for immigrants (CIE), and the main arguments against detention were related to the restriction of rights and liberties for deportable non-citizens and the lack of efficiency of such instrument to ensure actual deportation. Furthermore, the statement accused the Spanish conservative government of "promoting a dehumanizing discourse towards the immigrant population, implicating that they constitute a threat, implementing policies based on security and fear, covering the unprotection of human rights and even violence within and without country borders, thus leaving room for spaces of negation of the Rule of Law". Unexpectedly, 350 Spanish judges and magistrates (representing 6% of the judiciary) publicly signed their names endorsing the statement published by the progressive JpD association, thus risking at least a reprimand from the governing body of the judiciary (CGPJ).² Since 2013, the majority of the CGPJ is clearly conservative, and thus the JpD statement can be seen as a clear political signal of dissent against both the government and the governing body of the judiciary. We use the support to this statement as a proxy for leftist or progressive policy preferences (i.e., ideology).

In total we have information about 44,335 restraining orders filed across 1,063 different courts on duty distributed among 340 court districts in Spain. Petitions for restraining orders were heard by 1,528 unique on-duty judges, of which 63 percent were female and 37 percent male. Of these 1,528 judges, only 47 (3.1 percent) signed the above mentioned progressive manifesto, and in consequence these are the only ones that can be classified as leftist judges. Overall, 72 percent of restraining order petitions were granted by judges.

Table 1 shows basic summary statistics of the main variables once the data set is organized at the judge-year-decision level. Female judges decided on 60% of the petitions (they represent 63% of judges in the data), and leftist judges heard 3.5% of petitions, which is their actual proportion among judges in the data. This distribution of cases supports the idea that the distribution of male and female judges across judicial districts is very

²For instance, when some months before (February 2014) 33 Catalan judges signed a manifesto in favor of the celebration of a referendum of independence in Catalonia, the governing body of the Spanish judiciary (CGPJ) investigated whether they had violated their mandatory neutrality. A couple of days later, the president of the CGPJ declared in a newspaper that "it's better not to publish manifestos than to do so." (ABC, February 27, 2014). Finally, none of the 33 Catalan judges suffered disciplinary actions.

close to random. Each on-duty judge heard on average 13 petitions, although the variation is quite high. In addition, the average level of experience among our judges is 10.6 years, with a standard deviation of almost 8 years).

Because case-level information is not available for pretrial decisions made by lower courts, we have no knowledge whatsoever about the facts of cases, which introduces a high volume of noise in the data and presents an important challenge to our analysis.

Table 1: Summary statistics of the main covariates of the Domestic Violence dataset.

Statistic	N	Mean	St. Dev.	Min	Pctl(25)	Pctl(75)	Max
Petition granted	44,335	0.72	0.45	0	0	1	1
Female judge	44,335	0.60	0.49	0	0	1	1
Number of petitions filed	44,335	13.28	8.75	1	7	18	54
Experience (years)	28,991	10.58	7.80	0.00	5.00	14.00	36.00
Leftist judge	44,335	0.00	0.00	0	0	0	0

3.2 Identification strategy

We exploit the random distribution of case files among on-duty judges within court districts to estimate the effect of judges' gender, career incentives, and ideology on granting restraining orders in cases of gender violence. The unit of analysis in the data set is judge-decision-year, and data have a hierarchical structure: cases are nested in courts within judicial districts, within provinces, within regions. Although in less populated areas of Spain judicial districts may have only one court, in more urbanized areas districts usually gather several courts, according to population.

According to the law, within each district, there must always be a court on duty to attend all incoming cases out of the regular hours of the courts. On-duty assignments (which last one-week periods) are made by rotation among all judges serving within the same judicial district on the same court level (e.g. courts of first instance and inquiry), and all incoming cases while on duty are first processed and given due process by the court whose judge is on duty. After receiving incoming cases, in regular situations these on-duty judges will assign the case to a court within the district by another rotatory process that ensures a random distribution of cases to judges, but when cases entail urgent petitions for pretrial measures (e.g., restraining orders or arrests), judges on duty will make such decisions.

It could be argued that treatment assignment might suffer from selection bias. For instance, if a judge is known to grant only a small fraction of restraining orders, lawyers

could advise victims to defer their petitions for restraining orders until a more favorable judge can hear it. This scenario is unlikely for at least two reasons. First and foremost, when victims go to the court that is on duty and file a petition for a restraining order usually do that as an urgent call—literally because there *has been* an aggression—which makes strategic behavior quite unlikely. Second, in Spain victims usually don't go directly to court to file their petitions, but go first to their nearest police station to report the aggression, and it is the police that informs them that they have the right to enter a petition for a restraining order, which is actually prepared within police premises.

In a related project, we had access to a sample of 127 files of restraining order petitions within the Spanish region of Catalonia. From that sample, only 4% of victims filed their petitions for restraining orders directly to court, while 95% did it through the police. Once in the police station, 48% of victims requested legal advice to go to court (87% through free legal aid). Still, 52% of victims who went to court after going to the police to file their petition did it without a lawyer. A large number of victims only get a lawyer once the petition has been processed, so that further criminal charges can be brought against the aggressor. Therefore, we assume that gender treatment is as good as randomly assigned to petitions within judicial districts, and that the threat of reverse causality is very small.

Table 2 shows the results of the balance table of our main covariates comparing our treatment groups (petitions heard by female and male judges). The results show that differences in experience and the number of petitions heard by male and female judges, though small, are significant. Male judges are on average 3 years more experienced than female judges, which responds to the later entrance of women to the judicial career. This would also explain why male judges tend to hear a little more petitions than female judges. Due to the dynamics of the selection and promotion system set up in the Spanish judicial career, more experienced judges have higher probabilities to serve in courts located in larger cities, while less experienced judges serve more in rural areas. Given that female judges are on average in earlier stages of their judicial careers, they tend to be overrepresented in rural judicial districts.

Regarding ideology, Figure 2 shows the distribution of leftist and otherwise judges by gender and experience. We see that while this distribution among female judges is quite well balanced during the first 20 years of experience, the distribution among male judges is highly skewed with a peak among more junior judges.

3.3 Method

To test our hypotheses we fit a number of logistic regression models, in which our response variable has value 0 if the judge decides to deny a restraining order, and 1 if the

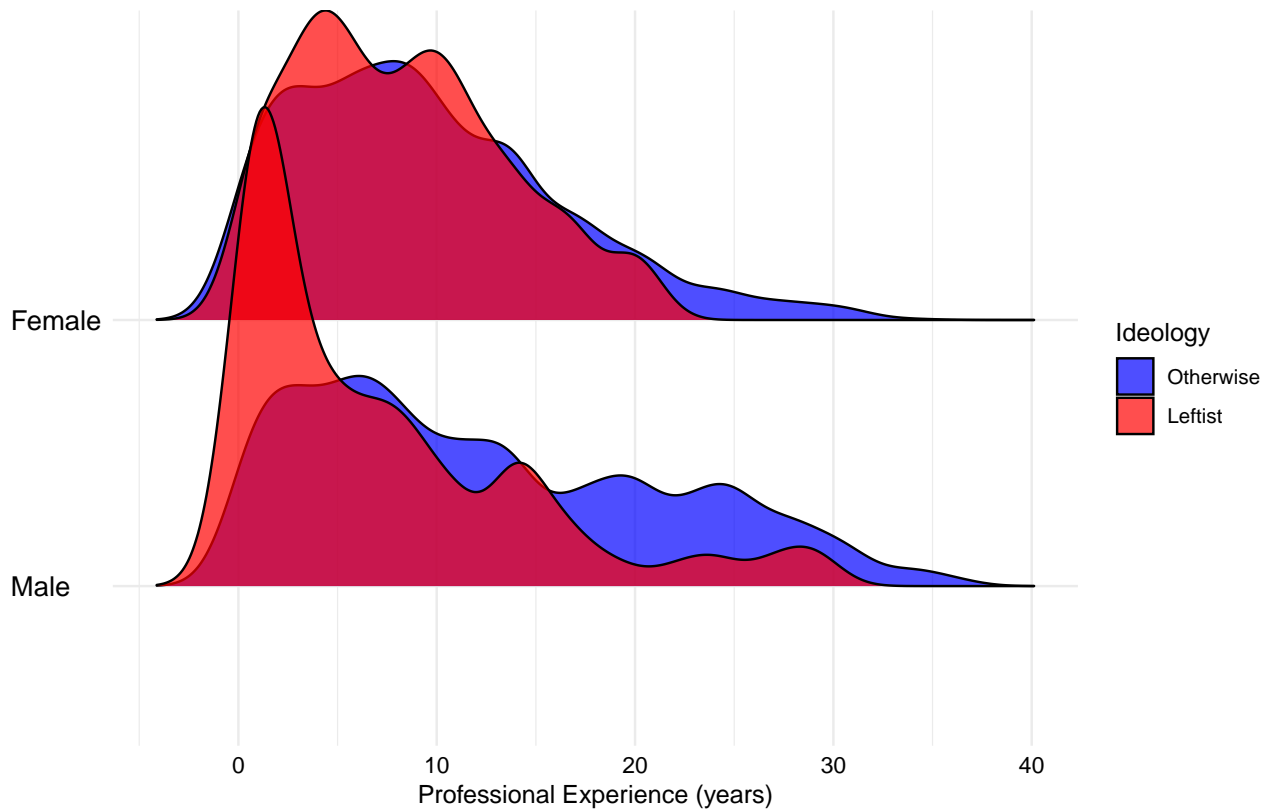


Figure 2: Distribution of policy preferences across professional experience and gender

Table 2: Balance table of covariates on gender treatment (Female==1, Male==0).

	0		1	
	Mean	Std. Dev.	Mean	Std. Dev.
Petitions filed	14.2	8.9	12.7	8.6
Experience	12.3	9.0	9.5	6.7
Ideology	0.0	0.0	0.0	0.0

restraining order is granted in favor of the victim. The models include fixed effects at different levels depending on the distribution of the relevant covariates. The first two models test the effects of gender and experience on judicial decisions, and they include fixed effects by judicial district and year. Given that there is also variation at the judge level (we have judicial decisions over time), the third model tests the effect of experience with fixed effects at the judge level. The fourth model tests the conditional effect of experience on gender, with fixed effects by judicial district and year. The fifth model tests the effect of ideology, and includes fixed effects by year only, because there are a number of judicial districts with no leftist judges throughout the period. Finally, the last model includes a triple interaction between gender, experience and ideology with fixed effects by judicial district and year.

4 Main empirical results

Table 3 presents the results of our regression models. The first two models show that when restraining orders are requested to female judges, the probability of these being granted increases compared to male judges. Predicted probabilities by gender are plotted in Figure 3, which show that the effect is not large, though we should take into account that models cannot include information at case level, which makes the data rather noisy. Furthermore, the gender effect is robust to controls such as the volume of petitions filed in court and judges' level of experience, thus giving support to our first hypothesis.

The second and third models test the effect of career experience on judicial decisions, and yield coefficient signs and significance in the expected direction. As expected by our second hypothesis, as judges get more experience they tend to grant restraining orders more frequently. Figure 4 represents the change in the predicted probability across years of experience from the model with fixed effects at the judge level. According to these results, the probability to grant a restraining order by a judge in their first year on the bench is on average .77, while more experienced judges will grant orders at higher probabilities (.81 with 10 years, .9 with 30 years).

While the third model suggests that career expectations might be relevant to explain variation in judicial decisions, the fourth model tests whether these career expectations affect differently male and female judges, as stated in our third hypothesis. The expectation is tested through an interaction between gender and level of experience, and it yields a positive and significant coefficient for female judges. This means that, as shown in Figure 5, female judges are more sensitive to the effects of experience on judicial decisions, which in turn means that the difference in the probability to grant a restraining order

Table 3: Results of the regression models of judicial pretrial restraining orders in gender violence cases.

	Decision in favor of victim					
	(1)	(2)	(3)	(4)	(5)	(6)
Female	0.057** (0.026)	0.075** (0.033)		-0.051 (0.054)		-0.057 (0.056)
Number of petitions (log)	-0.190*** (0.024)	-0.204*** (0.030)		-0.206*** (0.030)	-0.192*** (0.024)	-0.206*** (0.030)
Leftist					0.034 (0.073)	-0.278 (0.188)
Experience (years)		0.019*** (0.004)	0.018** (0.008)	0.014*** (0.004)		0.013*** (0.004)
Female*Experience				0.012*** (0.004)		0.012*** (0.004)
Female*Leftist						-0.263 (0.301)
Experience*Leftist						0.026 (0.021)
Female*Experience*Leftist						0.049 (0.034)
Constant	-28.517*** (10.015)	-8.656 (12.399)	2.595*** (0.732)	-5.749 (12.444)	-28.853*** (10.027)	-3.192 (12.484)
Fixed effects	Dist./Year	Dist./Year	Judge	Dist./Year	Year	Dist./Year
Observations	44,335	28,991	28,991	28,991	44,335	28,991
Akaike Inf. Crit.	47,398.150	30,746.900	29,457.040	30,740.390	47,402.620	30,737.790

Note:

*p<0.1; **p<0.05; ***p<0.01

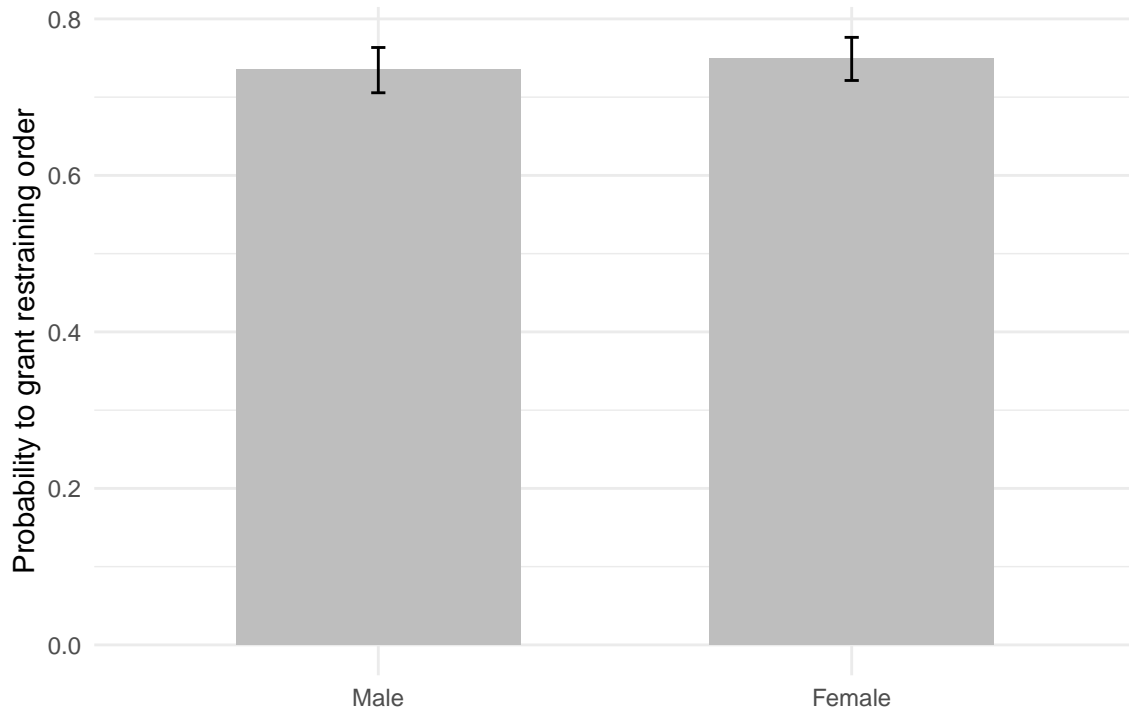


Figure 3: Predicted probability to grant restraining order by gender.

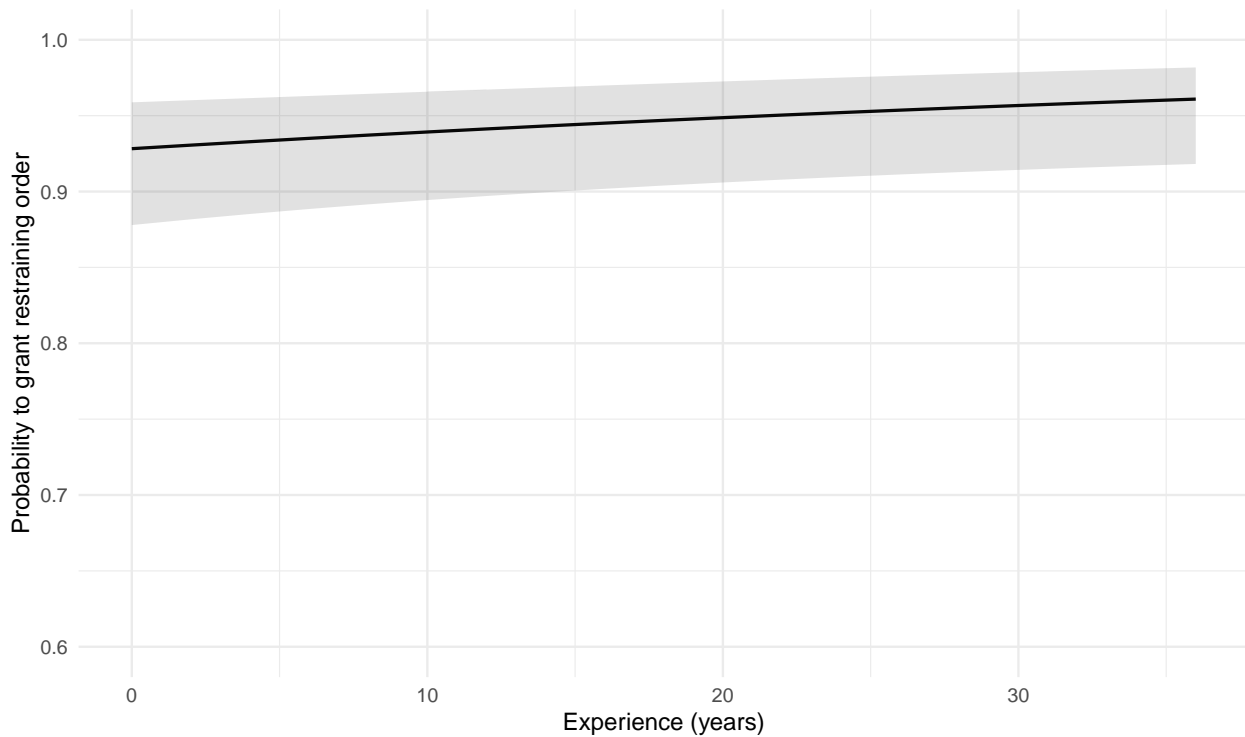


Figure 4: Predicted probability to grant restraining order by years of experience

between junior and experienced judges is larger among female than male judges. In particular, as Figure 5 shows, at the beginning of their careers male and female judges grant restraining orders with similar probability (around .7), but as they get more experienced this probability increases more steeply among female than male judges.

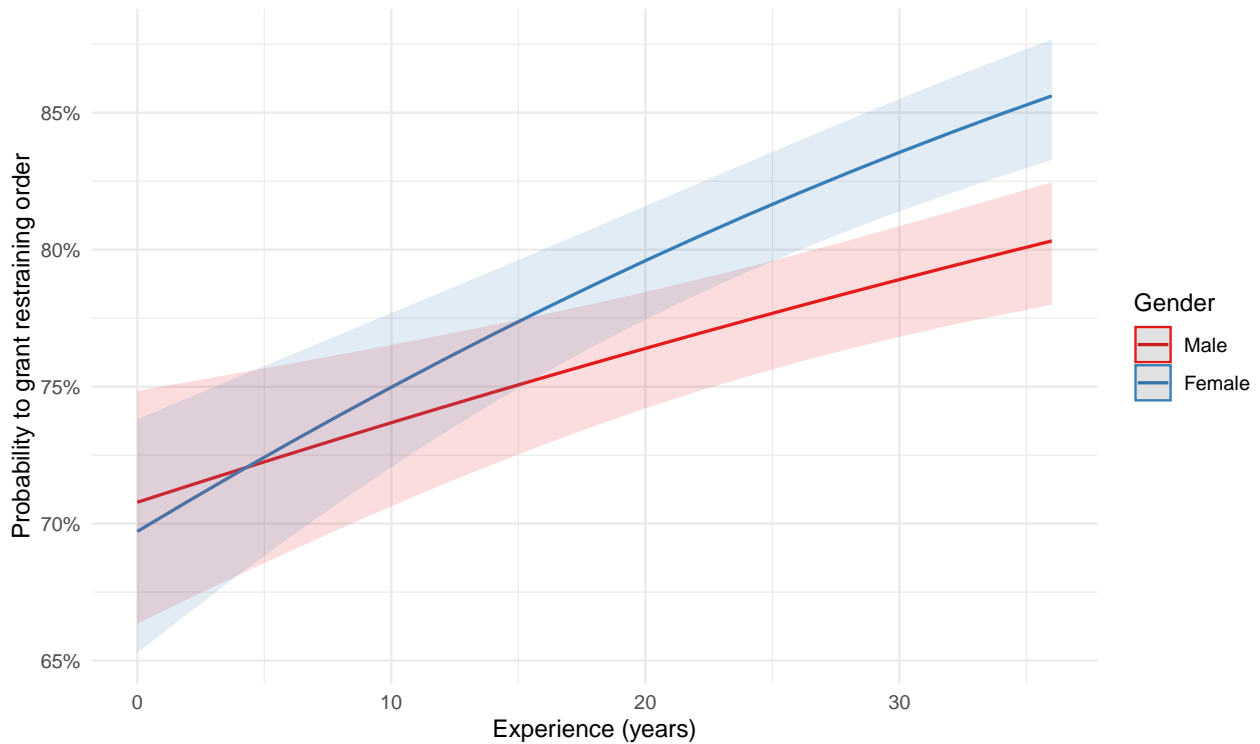


Figure 5: Predicted probability to grant restraining order by gender and years of experience.

These findings give preliminary support to the idea that judges at the start of their careers have less incentives to signal distinct behavior. In order to further test this hypothesis, the fifth and sixth models include our measure of the ideology of judges. Because the fraction of judges for which we have some measure of ideology is very small (3 percent), the fifth model yields a positive (but non-significant) coefficient for leftist judges, which tend to grant restraining orders at higher probabilities than the rest of judges.

In addition, the last model tests whether the effect of ideology is also moderated by experience as it is in the case of gender, and that is actually the case. On the one hand, the coefficient for the two-fold interaction between experience and ideology yields a positive coefficient, indicating that the effect of ideology is stronger as experience increases, as represented in Figure 6.

At the same time, though, the triple interaction between experience, ideology and gender gives additional support to the idea that the effect of career incentives on ideology

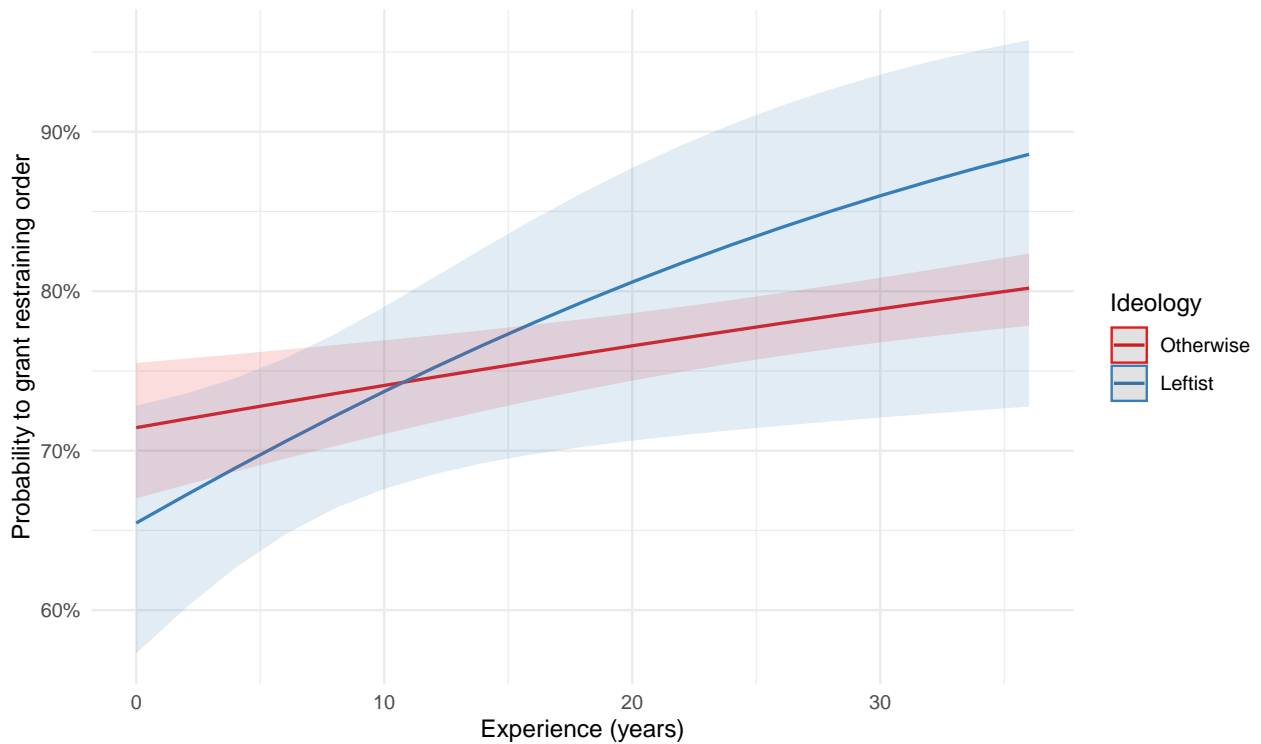


Figure 6: Predicted probability to grant restraining order by years of experience and ideology.

is not the same in male than in female judges. Figure 7 shows the predicted effects of that triple interaction, indicating that while among leftist judges the effect of experience is overall stronger (the lines are steeper), there is no significant difference between male and female judges. In contrast, among non-activist judges, the effect of experience is stronger for female judges. This suggests that, though effects are everywhere small, ideology and gender work separately. In particular, among leftist judges differences between male and female judges disappear, while they are present among non-leftist judges.

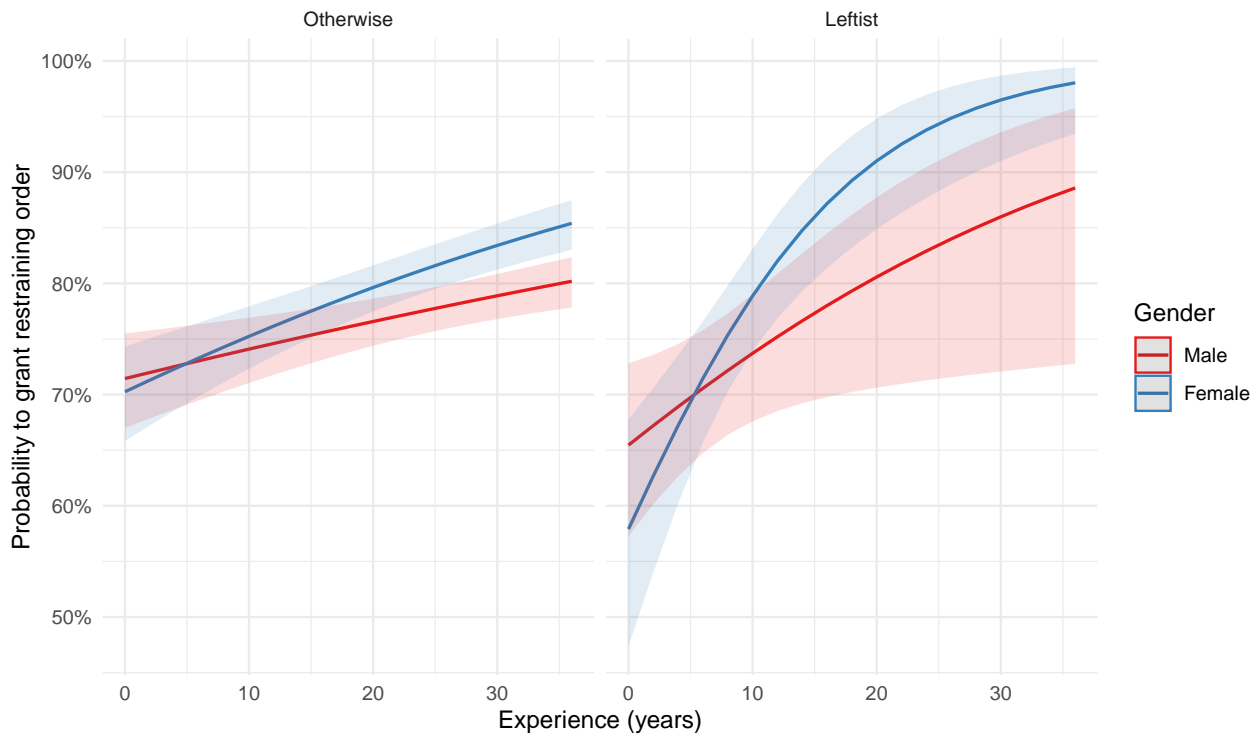


Figure 7: Predicted probability to grant restraining order by gender.

5 Conclusions

In this paper we explored factors behind judicial inequality in pretrial decisions on restraining orders in gender violence cases. In particular, we explored how judges' gender, ideology, and career effects their pretrial decisions in Spain. In doing so, the paper makes two main contributions to judicial politics. On the one hand, lower pretrial judges in civil-law countries typically are appointed on purely technical grounds according to their performance in competitive exams mainly based on legal knowledge, after which they become civil servants with life tenure. This feature of civil-law systems helps depicting judges as anonymous decision makers with completely unobservable ideology or policy preferences, a picture that is even sharper when we observe behavior down the judicial ladder. Through an indirect strategy, this paper was able to measure pretrial judges' policy preferences and test its effects on their decisions. On the other hand, we exploited the random distribution of cases to judges within judicial districts to estimate the effect of gender, policy preferences and career incentives on judicial decisions.

To test the effect of these factors, we used data from on-duty pretrial court decisions on restraining orders in Spain for four years. We started off conceptualizing gender as an in-group mechanism that should work on both male and female judges in cases of gender

violence. In particular, our first expectation was that female judges should empathize more with female victims (who match their group identity) than male judges, who might show higher levels of empathy toward male defendants (i.e., aggressors), which should translate in female judges granting restraining orders for victims of gender violence at higher rates than male judges. Results support this hypothesis. Despite the fact that restraining order petitions to on-duty courts tend to be granted at higher rates than those filed to ordinary courts (urgency makes them more likely to refer to critical episodes of violence), we find systematic differences between male and female judges when granting restraining orders.

Our second expectation was that, given the structure of judicial career in Spain, the rate of approval of restraining orders should grow with professional experience, and it also received support from our results. Moreover, because in Spain promotion is harder for female than male judges, we also found that female judges are more sensitive to the marginally declining effect of career pressure.

Our second bias mechanism of interest in the paper is ideology, and as with gender, we expected it to have an overall effect in judicial behavior, to the effect that left-leaning judges should decide more in favor of the victim than right-leaning judges, and that that effect should be moderated by professional experience. According to our results, although leftist judges do grant restraining orders at higher rates than non-leftist judges, the effect of ideology is highly sensitive to the stage of their career in which they find themselves when making their decisions. Therefore, ideology is more likely to show up among more experienced judges, while there is no observable difference between leftist and otherwise judges at lower levels of professional experience.

These results point to the fact that unequal decisions at lower-court level have critical consequences on the everyday lives of millions of citizens, and thus may have an impact on the overall legitimacy and impartiality of the justice system.

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