Recognizing and Accounting for “De-Randomizing” Events When Utilizing Random Judicial Assignment

Dane Thorley

SUMMARY: This article adds to the growing literature challenging the general assumptions of random judicial assignment by identifying a set of common assignment procedures that I call “de-randomizing” events. These events, which include non-random assignment itself, should be accounted for in order to make unbiased causal claims but are commonly either ignored or not even recognized by researchers utilizing random judicial assignment. This article also attempts to fill in what others have noted to be a dearth of information on the assignment protocols of courts other than the U.S. Courts of Appeals by presenting original data from a survey of the 30 largest state-level criminal courts, outlining their assignment protocols, and identifying the extent to which they feature these “de-randomizing” events.

“DE-RANDOMIZING” EVENTS IN JUDICIAL ASSIGNMENT

TYPES OF JUDICIAL ASSIGNMENT PROCEDURES:

• Random Assignment: A judicial assignment procedure can be defined as random when cases are assigned to judges independently of any value, characteristic, or variable other than a truly exogenous assignment mechanism. The probability of assignment across judges does not have to be equal, but it does have to be known.

• As-If-Random Assignment: A judicial assignment procedure can be considered “as-if-random” when cases are assigned to judges based on one or more of a case’s pre-treatment characteristics (defendant demographics, case type, etc.) that are arguably independent of potential outcomes (potentially strong assumption). If truly independent, as-if-random assignment mechanisms function in the same way as a set of random numbers.

• Non-Random Assignment: A judicial assignment procedure is not random when cases are assigned to judges independently of any value, characteristic, or variable other than a truly exogenous assignment mechanism. The probability of assignment across judges does not have to be equal, but it does have to be known.

SPECIAL ASSIGNMENT PROCEDURES:

• The Problem: Nearly all courts, even those that use random assignment for most cases, assign certain types of cases to specific judges based off of case characteristics that are not independent of potential outcomes.

• Judicial Specialization: Some judges specialize in certain types of cases and are always assigned those types of cases.

• Administrative Discretion: Administrative discretion functions similarly to specialization, except the deviations from the normal assignment procedure are generally done by the administrative judge on a case-by-case basis. Unlike case specialization, administrative discretion is utilized on an ad hoc basis, making it more difficult to identify.

• Repeat and Probationary Offenders: If the defendant had previously been convicted of a crime or is being tried for a crime in the jurisdiction in which his or her new case is being processed, it is common for courts to assign these defendants directly to the judges who previously oversaw or who are currently presiding over previous cases. In order to include repeat offenders who are re-assigned to their original judges in an analysis, we have to assume that each judge in the analysis group creates the same number and type of repeat offenders.

• The Solution: Exclude these cases, but make sure to account for possible effects on assignment probability.

MISSING OUTCOMES:

• The Problem: Case outcomes are often unavailable to researchers. If the propensity for attrition is related to outcomes of interest, point estimates will likely be biased.

• Plea Bargaining / Settlements: A large number of cases are resolved through either plea bargaining (for criminal cases) or settlements (civil cases). This generally means that the outcomes of interest for that particular case are no longer available.

• Selective Publication of Opinions or Records: Most studies utilizing random judicial assignment are concerned with outcomes based on case outcomes or court records. In some cases, particularly when sensitive information or vulnerable parties are involved, the data for a case will be unavailable to researchers.

• Lost or Incorrect Records: Due to human error, some court records and outcomes will simply be lost. Similarly, if the research’s outcomes of interest relate to behavior after the case has concluded (recidivism, public behavior, etc.) many individuals will fall off the map or be unwilling to provide data.

• The Solution: Attrition is a serious threat to unbiased point estimates and cannot easily be accounted for. Researchers can either make strong assumptions regarding the nature of attrition or by bounding estimated treatment effects if attrition rates are sufficiently low.

WHAT ABOUT BALANCE CHECKS (RANDOMIZATION TESTS)?

Balance checks provide a way to test whether prognostic variables are distributed as the researcher would expect (generally equal across judges). When the relevant pre-treatment variables are balanced, it suggests that the “de-randomizing” effects described above do not exist or are not salient enough to be of concern. However, this approach relies on the strong assumption that all the important variables have been identified and tested for, and is a secondary option behind identifying and accounting for the effects described above.