**Trial Courts, Local Regimes, and the Maintenance of Power**

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**Abstract**

Though state trial courts handle the vast bulk of legal work in the United States, little work has been done to consider the ways in which these institutions are connected to the broader political regimes in which they operate. This study explores the ways in which trial courts can be tied up with and connected to dominant political regimes at the local level, particularly in cities with political machines. Biasing the electoral system, rewarding supporters, and punishing opponents are all tools that have been used by trial courts in machine cities. These courts are also a key part of the downfall of the very regimes they supported. These findings raise questions and directions for future research regarding the connections between trial courts and political regimes today.

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 Thinking about courts as political institutions as well as legal institutions is fairly deeply ingrained in political science today. The framework of regime politics, for example, is used to place courts within the broader political and legal context within which they operate (Clayton and May 1999; Gillman 2008). In what ways are courts constrained by other political institutions? What avenues are open to courts because of the actions of political regimes outside the judiciary? How do other political actors use courts to achieve their goals? The study of courts as political institutions, though, has focused primarily on federal courts, and in particular on the United States Supreme Court. While the Supreme Court undoubtedly receives the most attention and ostensibly sits atop the judicial hierarchy, in practice the vast bulk of legal work in the United States is done elsewhere. Though there have been impressive efforts to study the political implications of judicial selection for trial courts (Arbour and McKenzie 2010; Huber and Gordon 2007), trial court judicial decision-making (Bushway and Piehl 2001; Harris 2007), and the impact of differing court cultures on outcomes (Ostrom et al. 2007), little work has been done to identify the ways in which trial courts are responsive to external political influence outside of selection. This study begins the process of shining light on this important aspect of trial courts by considering the ways in which trial courts can be tied up with and connected to dominant political regimes at the local level.

Political regimes have made extensive use of trial level courts to assist in governance and maintenance of political power. In particular, I am interested in the ways in which city-level regimes[[1]](#footnote-1) have relied on state trial courts as a key mechanism for effective governance. As with all studies of trial courts, the sheer volume, variation, and complexity of the institutions requires some narrowing focus in order to be able to effectively proceed. In this instance, I focus exclusively on cities where political machines operated. Though this limits the scope of conclusions that can be drawn, it is a valuable place to begin both because subsequent investigations into the collapse of political machines revealed otherwise hidden dynamics and because it points the way to more subtle dynamics that we might expect to still be active today.

What follows is an examination of the interactions between trial courts and political regimes in five different cities (Chicago, Philadelphia, Kansas City, New York, and Jersey City) ranging in time from the 1870s to the present, with an emphasis on the early 20th century. As I will demonstrate, in the context of machine politics, political regimes have used these courts to reward supporters, punish opponents, and bias the electoral system in their favor. These courts are important not only in the maintenance of the regimes, but also in their subsequent downfall. Indeed, the political control of the trial courts was often attacked directly either through preempting that control or through limiting the possibility of political control as a result of judicial reform.

**The Role of Trial Courts at the Local Level**

 Trial courts have long played an important role to party leaders at the city level. Where machine politics are practiced, the dominant regime is likely to exercise greater control over the different branches of government, including the judiciary. The following study focuses exclusively on trial courts of limited and general jurisdiction, without including intermediate courts of appeals or courts of last resort. It also excludes courts such as the County Court in Kansas City which, though bearing the name “court,” serves almost no judicial function. All of the courts and judges discussed serve primarily in a judicial role. In all but one of the cities studied, judges during the periods discussed were elected through partisan elections.[[2]](#footnote-2) Jersey City, the one outlier, used a gubernatorial appointment process with senatorial confirmation but the city boss, Frank Hague, exercised an unusual amount of statewide control.

 The courts in particular were an institution over which machine leaders were eager to gain control. Kansas City boss Tom Pendergast famously said “I’m not greatly interested in congressmen. I’d rather have a justice of the peace than a congressman. A justice could do me more good” (Larsen and Hulston 1997, 91). Regime leaders exercised control over the courts most directly through control of the selection process. Merriam (1929, 131) described the process used in early 20th-century Chicago. After the ward committeemen selected the judges who would be nominated, the official filing of the names would be held back until it was too late for an independent candidate to gather sufficient signatures to make the ballot if they were unhappy with the selected judges. The Seabury Investigation in New York pointed out that judgeships were plum positions deemed appropriate only for faithful party workers (Seabury 1974, 14) To be elected as a judge in Mayor Richard J. Daley’s Chicago, a nominee had to be slated by the central committee. Since Daley sat as chair of the central committee, he effectively controlled who could be judge. Not surprisingly, the result was that most of the judges came up through the machine- indeed, many were former ward bosses (Royko 1971, 64; Tuohy and Warden 1989, 45–46).

 A more recent example of this control took place in Brooklyn. The 2003 investigation of Assemblyman Clarence Norman exposed the control party leaders can still wield over the selection process. In Brooklyn, the judicial nomination process required applications to go through a screening committee appointed by Norman. The members of the committee had no fixed terms and could be removed by Norman at any time. When one candidate’s application was refused even a review in 2002, Norman said “it's my screening committee ... if I know there is someone we are not going to endorse, then what's the point” (Task Force on Judicial Selection 2003, 389–390). This control over the nomination process allowed Norman to exercise a significant influence over the judiciary.

 Once the preferred judges are on the courts, what is it that political regimes expect from them? The interactions between courts and regimes can be divided broadly into two categories. The first set of activities involve using the courts to bias the electoral system in the regime’s favor. As will be demonstrated, this goes well beyond simply offering friendly interpretations of ambiguous laws. Judges can play a central role in vote fraud, preventing investigations, and ensuring electoral victory. But judges are not valued only for their assistance with elections. Courts are also a great way to reward supporters and punish opponents. Judges control patronage positions, approve corrupt contracts, and allow party leaders to engage in constituent service by dismissing civil and criminal matters at their request. Each set of activities highlights the central connection between regimes and courts.

**Biasing the System**

 There are three distinct ways in which courts have been used to bias the electoral system in favor of the dominant regime: (1) influencing the makeup of the electorate by manipulating election rules; (2) aiding and abetting electoral fraud; and (3) actively blocking investigations into electoral fraud.

*Voter Registration*

 The first of these involves control over voter registration procedures. In many jurisdictions, challenges to voter registration policies are made directly to local courts. Friendly judges have worked both to restrict access to registration for regime opponents and to expand access for regime supporters. For example, in Kansas City, voter registration would be held only on certain days at certain places and were run by agents of the Pendergast machine. This allowed machine supporters to register while keeping opponents away. Though this violated state laws regarding voter registration, the actions were upheld by Kansas City judges selected by the Pendergast machine (Larsen and Hulston 1997, 122). In Chicago, Big Bill Thompson relied on County Judge Frank Righeimer to oversee the electoral machinery in a similarly favorable way (Wendt and Kogan 2005, 191).

 Other actions were more direct in expanding the base of supporters for a regime. Boss William Tweed of New York’s Tammany Hall needed to find a way to ensure that his support among Irish and German immigrants translated into votes. Unfortunately for Tweed, many of the immigrants since the 1850s had avoided becoming naturalized citizens. This was particularly acute during the Civil War, when becoming a citizen meant conscription. Fewer than 3,000 immigrants a year became citizens in New York between 1861 and 1863 (Ackerman 2005, 53). In gearing up for the contentious election of 1868, Judges George Barnard and John McCunn led the way in trying to fix that. The courts became naturalization mills, creating hundreds of new American citizens each day. Between 1856 and 1867, there were 70,604 naturalizations in New York. In 1868 alone, 41,112 naturalizations took place. Judge McCunn managed to naturalize 2,109 people in one day, averaging three per minute. Each of the applicants was supposed to have their application reviewed and have a witness confirm their qualifications. Tammany Hall filled out the blank applications and turned them in to the judges on behalf of the applicants. In closed proceedings, most were signed by the judges without any review. Some of the applicants were not even in court. One witness attested to the “good moral character” of 669 applicants and then was promptly arrested for stealing a gold watch and two diamond rings (Ackerman 2005, 40; Callow 1966, 211). The 41,000 new citizens comprised almost one-third of all the ballots cast in the city in 1868 (Ackerman 2005, 41, 54). Tweed effectively used the courts to increase the base of support for his political machine to great effect and his candidates soundly won the election that year.

*Courts and Electoral Fraud*

 Beyond shaping the electorate, courts were used by regimes to protect and enable direct electoral fraud. Election repeaters were a common tactic of political machines, relying on these people to “vote early and vote often.” By engaging in this sort of electoral fraud, machines were able to exercise greater control over the final vote tally. Repeaters were important to the functioning of the system and as a consequence, they needed to be protected. In response to a federal investigation into vote fraud before the 1936 election, the election board in Kansas City purged irregular registrations from its lists. As soon as the names were removed from one precinct, however, they appeared in another precinct, often by court order. In the election that followed, there were as many as 60,000 “phantom” voters (Milligan 1948, 144–145). The Pendergast machine could not survive without them and the courts were the mechanism by which they were protected. Tweed’s New York offers further examples. When election repeaters were arrested by U.S. marshals, they were brought before friendly judges and promptly released so that they could finish voting. The same judges who naturalized thousands of newly arrived immigrants also took the lead in freeing repeaters. Judge Barnard signed one habeas petition that freed twenty-seven prisoners at once (Ackerman 2005, 55–56).

*Avoiding Investigations*

 Courts were also useful for the regime after the election to cover up any fraud that took place. Judges could be used to deny requests for special prosecutors (Key 1935, 121) or fill jury pools with city workers who are part of the machine (Milligan 1948, 148). During the Seabury investigation of judicial corruption in New York, one of the witnesses was detained for contempt after suffering a “lapse of memory.” At the urging of Tammany Hall leader John Curry, a hearing was promptly heard by a vacationing judge in Lake Placid that precluded the attendance of counsel for the investigating committee. The witness was quickly released and Curry admitted he had “reached” the judge at Lake Placid (Key 1935, 126; Mitgang 1963, 225). The 1960 election in Illinois triggered extensive interest because of its implications for the Kennedy-Nixon presidential election, but it was the result of the state’s attorney race in Cook County that showed the greatest oddities. Mayor Daley permitted a special prosecutor to be appointed to investigate claims of election fraud, but he did not leave the process alone. Although the special prosecutor specifically sought a judge from outside of Chicago because of concerns about corruption, the downstate judge that was selected was also a part of the state’s Democratic machine and most of the charges were eventually dropped (Royko 1971, 119–120).

 A particularly remarkable example of judicial interference with investigations took place during the 1911 investigation into U.S. Senator William Lorimer. Lorimer, as the boss of Cook County, was accused of receiving election funds as bribes. The committee created by the state senate to examine the allegations ordered Lorimer’s accountant to turn over his accounting books since he allegedly received the bribes on behalf of Lorimer. When the accountant refused, the committee ordered him jailed for contempt. He was immediately freed by “Lorimer” Judge Adelor Petit. Judge Petit then proceeded to rule the committee’s actions unconstitutional because they were not investigating a member of their own legislative body. He held that all other investigations were the sole province of the judicial branch, effectively eliminating the subpoena power for the committee. After the ruling, the committee decided to simply end its hearings without reaching a conclusion (Tarr 1971, 271–272).

 All of these examples show the myriad ways in which courts can be valuable to political regimes seeking to hold on to power. These mechanisms for biasing the system are dependent on compliant and supportive judges, something that is assured by control over the selection process. Assistance at the time of election was not the only function played by courts, however. Courts were also deeply embedded in the everyday maintenance of regime power through rewarding supporters and punishing opponents.

**Rewarding Supporters and Punishing Opponents**

 Regime maintenance is not focused exclusively on election day. Even election fraud can only get a regime so far. In order to win political support, many regimes rely on constituent services and patronage for party supporters. Making life difficult for political opponents is also a time-honored tactic to increase the likelihood of electoral victory. Courts help regimes carry this function out in a number of ways. The judiciary is well-recognized as a site for extensive patronage, both among judges and staff. Beyond patronage, judges can protect supporters from the consequences of legal trouble, direct lucrative business such as receiverships to party supporters, and approve questionable business agreements when it helps the regime. Legal process can also be used to inconvenience and interfere with those challenging the regime.

*Patronage*

Beyond the selection of judges discussed above, the courts are filled with viable patronage positions. Clerks, bailiffs, and secretaries all needed to be staffed, invariably by party loyalists. Staff at courts would often be inflated just to create more jobs. In one district civil court in New York alone, there were eight stenographers on the payroll, although not a single one could be found when needed. The courts spent $26,000 more on staff at a time when the caseload actually dropped in half (Callow 1966, 125, 135). Judges also appointed masters of chancery, trustees, and members of various boards. Most judges understood their role in all this. Failure to appoint the proper people would result in the loss of their own position. Tammany boss Richard Croker was quite clear that failure to appoint a recommended person to a court position cost a Supreme Court judge his nomination (Gosnell 1969, 143).[[3]](#footnote-3) He responded to the judge’s public criticism of his decision by telling prominent leaders that “I suppose [Justice Daly] refers to a request made of him by Tammany Hall to appoint Michael T. Daley a clerk in his court. If that was what he meant, Tammany Hall has no apology to make for the request. Justice Daly was elected by Tammany Hall after he was discovered by Tammany Hall, and Tammany Hall had a right to expect proper consideration at his hands” (Teff 2008, 496).

Assemblyman Clarence Norman of Brooklyn was sued by Civil Court Judge Margarita Lopez Torres in 2004 over this same dynamic. After a successful election to the Brooklyn Civil Court with the support of the party, Lopez Torres received the following letter from a Brooklyn Democratic Party official:

Congratulations on your election. Clarence [Norman] and Vito [Lopez] have asked me to refer this wonderful gentleman to you as your Law Secretary.

Please be so kind as to interview him and obtain the necessary paperwork for his employment. (*Lopez Torres v. N.Y. State Bd. of Elections* 2006, 234)

The law secretary, in the New York system, is a staff attorney who assists the judge in all aspects of managing and deciding cases. Lopez Torres interviewed the recommended lawyer, but found him unqualified and instead hired a different attorney. The following month, Norman ordered her to fire the person she hired and hire his recommendation. When Lopez Torres refused, Norman told her that she would never move up to the Supreme Court. That message was repeated by Vito Lopez, the district leader, who told her to fire her attorney and hire “County’s” choice. When she continued to refuse, Lopez offered redemption by asking Lopez Torres to hire his daughter in the position instead. Once Lopez Torres turned down that request, she received no further support for her reelection to the Civil Court or her attempts to get elected to the Supreme Court. Another Brooklyn judge did hire Lopez’s daughter and was subsequently elected to the Supreme Court. While Lopez Torres was reelected to the Civil Court without party support, she found her nomination for the Supreme Court blocked at each stage by the party leadership (*Lopez Torres v. N.Y. State Bd. of Elections* 2006, 234–237; Teff 2008).

*Financial rewards*

 In addition to jobs in the courthouse, courts can be used to financially reward supporters in other ways. Tammany Hall controlled judges could be counted on to appoint the “right” people to street commissionships, receiverships, and refereeships (Callow 1966, 138). All of these positions were potentially lucrative and were restricted to only those who had demonstrated their loyalty. Lawyers handling cases in Kansas City needed to either make sure their name appeared on the approved list or hire another attorney whose name did appear on the list in order to have a shot before Pendergast-elected judges (Larsen and Hulston 1997, 118). In the course of investigating claims that a judge paid $100,000 to get a seat on the bench, Brooklyn investigators discovered that the Democratic party under Clarence Norman provided judges with a list of at least eight politically-connected lawyers who were to be appointed to lucrative receiverships and guardianships. Indeed, appointments of receiverships and guardianships did flow to the lawyers on the list with unusual frequency (Katz 2003).

 Approving questionable municipal contracts was another method for enriching supporters that required compliant judges. Tweed’s Tammany Hall was renowned for padding contracts by as much as 50 percent for kickbacks. One city commission tasked with determining the value of an inexpensive two acre piece of property submitted a bill to the city for over $26,000. Of that total, $3000 was for City Recorder John Hackett, himself a judge. When the payment was challenged in court for having violated a state law limiting compensation to thirty cents per lineal foot, Hackett explained that they started in the center of the property and measured in a spiral. Judge Barnard upheld the payment (Callow 1966, 141–142).

 Sometimes judges were necessary for the awarding of contracts in the first place. In Chicago in the 1920s, the circuit court controlled the membership of the South Park Commission. Since the commission was about to embark on a $3 million beautification project, control over the commission was vital for the regime of Big Bill Thompson. He was so eager to stack the courts with judges who would appoint his friends that he came up with a whole new slate of subservient judges, angering the sitting judges who were passed over (Wendt and Kogan 2005, 195). Thompson’s plan backfired, though. The rising Democratic politician Anton Cermak seized the opportunity by slating the deposed Republican judges plus Democratic judges on the Democratic ticket and won the election. This move paid real dividends when the Republican judges Cermak had supported joined with his Democratic judges to give him control over both the South Park Commission and the sanitary district. As control of these boards shifted to Democrats, so too did the contracts and patronage positions (Gottfried 1962, 184–185). This was, in a very real sense, the beginning of the Democratic machine in Chicago and it was made possible only through control of the courts.

*Get Out of Jail Free*

 Perhaps the most important way in which the courts aided regimes, though, was acting as a constituent service. When a constituent was arrested or ticketed or fined, the local ward boss could be counted on to put in a good word with the judge. Around the turn of the 20th century noted reformer Jane Addams described the Chicago system as follows:

The Alderman, therefore, bails out his constituents when they are arrested, or says a good word to the police justice when they appear before him for trial; uses his “pull” with the magistrate when they are likely to be fined for a civil misdemeanor, or sees what he can do to “fix up matters” with the State’s attorney when the charge is a really serious one (Stave 1971, 11).

The Seabury investigation in New York turned up countless examples of politicians petitioning sitting judges on behalf of their constituents. One magistrate judge admitted that his district leader interceded on behalf of his constituents probably “three or four dozen times” (Seabury 1974, 46–47). District leaders viewed contacting magistrates and other judges as a “civic duty” and one which helped assure that they would “make Democrats” (Seabury 1974, 47). Similar activities were found in Philadelphia, where magistrates were willing to state on the record that they welcomed visits from division committeemen about their constituents and took “[their] word in preference to any one else” (Ervin 1931, 94–95). Gosnell (1968, 79) found in 1936 that over one half of the precinct captains in Chicago gave aid to constituents who were in trouble with the law. The practice was continuing in the 1980s in Chicago when Judge Brocton Lockwood received a phone call from Alderman Vito Marzullo asking him to “take a look at” a case for a close personal friend of his. As Lockwood recounts, the phone call didn’t make a difference in the outcome of the case, but it was critical for Marzullo’s relations in his district (Lockwood 1989, 16–17).

 The intervention of ward bosses and aldermen did make a difference in many cases, though. The Seabury report recounted an incident involving the arrest of two men for alleged assault. One called his brother to have him intercede with the district leader. After the district leader met with the magistrate in his chambers, the defendant was only fined $50 despite a lengthy criminal record. The other defendant, who did not contact his district leader, was sentenced to ten days in the workhouse despite being partially paralyzed and having a clean criminal record (Seabury 1974, 24–26). In another case, a company accused four employees of stealing merchandise. Three of the four confessed and agreed that they worked with the fourth. The fourth got a lawyer who was connected to the local regime and his case was dismissed by the judge after ruling that the testimony of the other three was not admissible (Ervin 1931, 95–96). This extended to minor cases as well. A Philadelphia study of automobile related arrests in 1928 found that 88% were discharged (Ervin 1931, 98).

 At times, regimes developed connections with more explicitly criminal groups, especially when they could be relied on to enforce the regime’s wishes come election day. Known criminals in New York who might be of use to Boss Tweed’s Tammany Hall were routinely released by regime-friendly judges. Judge Albert Cardozo and Recorder John Hackett were renowned for freeing criminals who were useful as election repeaters or enforcers. Judge Cardozo reportedly released over 200 defendants represented by one connected firm alone (Callow 1966, 139–140, 151). Bookmaking cases in the 1920s were routinely discharged. Assistant clerks would be contacted by the defendant and file a form with the judge expressing doubt about the case. The magistrates would then immediately discharge the case despite a responsibility to investigate the accuracy of the form. One transcript of the complete exchange between a judge and police officer after the judge received a form from the clerk went as follows:

 **The Court: Officer, where did you arrest this man?**

 **The Officer: In front of 244 West 49th Street yesterday afternoon at about two o’clock.**

 **The Court: Case dismissed and defendant discharged.**

Of the 4,238 bookmaking cases brought in 1929, only 161 were held by the magistrates for trial. The other 4,077 were discharged by the magistrates (Seabury 1974, 65–69). Gambling was also overlooked in Kansas City in the 1930s. The county attorney sought to shut down all of the slot machines in the city, bringing charges against numerous operators. The justice of the peace, though, was a “veteran Pendergast henchman” and dismissed all of the cases for lack of evidence despite having just heard damning testimony (Reddig 1947, 216).

 This influence in the courts was occasionally used to protect more central members of the regime from criminal charges, especially when it would reflect poorly on the regime as a whole. After the killing of two Black Panthers by fourteen Chicago police officers, a special state grand jury investigated Mayor Daley’s handpicked state’s attorney Edward Hanrahan for his role in ordering the raid that resulted in the deaths. At the conclusion of the investigation, the grand jury returned an indictment against Hanrahan and thirteen of the police officers. Judge Joseph Power, a neighbor and former law partner of the mayor, in an almost unheard of action, refused to sign the formal presentment. He accused the head of the grand jury investigation, Barnabas Sears, of inadequately carrying out his responsibilities and ordered the grand jury to hear testimony directly from Hanrahan. After hearing twenty hours of testimony from Hanrahan, the grand jury again attempted to present an indictment. Judge Power appointed a special friend of the court to determine whether Sears had inappropriately influenced the grand jury. After three months of appeals to the Illinois Supreme Court, the high court ordered Judge Power to deliver the indictments. Power agreed, but in his last act as arraigning judge assigned the case to Judge Philip Romiti, another judge with close personal ties to the Daley machine. Over a year later, Judge Romiti acquitted Hanrahan of all wrong doing in the case (Biles 1995, 179–180).

 Courts were just as active in helping the regime in the area of civil cases. Jay Gould, who developed a friendly relationship with Boss Tweed after the Erie Railroad takeover, sought and received protection from Tweed-controlled Judge Cardozo to keep him from needing to pay his debts in 1869 after an unsuccessful attempt to corner the gold market (Mandelbaum 1965, 73). Later in the century, 75 percent of city ordinance violations in New York were dismissed without a penalty and over 29,000 separate citations against the city railways for running cars without licenses failed to net a single cent in fines for the city (Teff 2008, 494). A restaurant owner in Philadelphia received two parking tickets a day, but never had to pay for the traffic violations because of his political connections (Ervin 1931, 99). Each of these examples demonstrates the instrumental ways in which courts could help regime supporters. At the same time, courts could be very useful for punishing regime opponents.

*Punishing Opponents*

 When New Jersey governor Charles Edison tried to break the political power of Jersey City boss Frank Hague in the 1940s, he attempted to eliminate the corrupt Hudson County Tax Board with the support of Judge John Warren. The effort failed, but Hague did not forget Warren’s opposition. As soon as the battle over the tax board ended, a suit was filed in Chancery Court against Judge Warren for $150,000 over ownership of a mortgage. Warren knew he was in dangerous territory. He immediately appealed to the Court of Errors and Appeals to remove the case from Chancery Court because it was “absolutely dominated by Frank Hague and used by him for his personal and political purposes” (Van Devander 1944, 106). The case was removed and then dropped, but Warren understood the message clearly. Rival politician John Longo took a little bit longer to get the message. When he tried to set up a rival machine to Hague’s, Hague had him arrested for filing fraudulent primary petitions and sentenced by a Hague judge to nine months in jail. After his release, Longo tried to challenge Hague again and this time was convicted of having altered his voting record. The sentence this time was 18 months to 3 years. Longo did not make another attempt to return to Jersey City politics (Van Devander 1944, 107–108). The example of Jersey City shows how easily bosses could use their control over the courts to target threats to their political power. Key noted in the 1930s that “indictments for criminal libel, if the courts are machine controlled, may serve as a method of retaliation” (Key 1935, 122).

 At times, this tactic influenced national politics. When word about the Credit Mobilier of America scandal emerged it threatened to engulf many Republican members of Congress. Boss Tweed, a Democrat, was happy to encourage that, especially since it implicated the previously untouchable Congressman James Garfield. Tweed ally James Fisk promptly filed suit in New York court as a shareholder of Credit Mobilier of America.[[4]](#footnote-4) Judge George Barnard heard the case and decided to appoint Tweed as the receiver for the company (incidentally enriching Tweed). Fisk and Tweed viewed the scandal as a great opportunity to go after their political enemies. Republicans in Congress immediately sought to remove the case to more friendly federal courts and a federal district court judge agreed. Judge Barnard, however, ignored the order and continued to hear public testimony with an eye toward exposing as much information about Tweed’s political enemies as possible. Once the information was out, Barnard happily let the case die, its purpose served (Hershkowitz 1977, 143–144).

 Trial courts have served as an integral part of maintaining political power for local regimes. It is worth noting that the vast majority of actions taken by trial courts on behalf of regimes are unreviewable by either higher courts or federal courts. The dismissal of criminal charges, for example, is not subject to appeal. Because of this, control of trial courts within the city was of great value to regimes even when they could not control appellate courts throughout the state. Though largely left out of the traditional stories of political control of cities and ignored by regime politics scholars of courts, local judiciaries were not ignored by politicians. As I have demonstrated, politicians and party leaders paid careful attention to how trial courts could be used and relied on them to both bias the electoral system and reward supporters.

**A Double-Edged Sword?**

 Local regimes were not the only ones to notice the utility of local courts. Those opposing the political machines recognized the value that these courts provided as well. As a consequence, trial courts played a role not only in the maintenance of political regimes, but also in their downfall. Even authoritarian regimes do not exercise complete control of all facets of political life. For political machines in the United States, embedded in a larger political system at the state and federal level, the challenges to maintaining power are substantial. While the collapse of each political monopoly is highly context-specific (Trounstine 2008, 173), there are identifiable patterns to the role that trial courts play in that collapse. These are co-optation, disarmament, and going rogue.

*Co-optation*

 One possibility when a political machine is faltering is for the opponents of the machine to seize control of the local courts themselves and use the courts to advance the downfall of the machine. This happened in Tweed’s New York. Reformers turned to the courts. It was George Barnard himself who issued an injunction to halt further spending by the city that opened the final investigation into Tweed. Speculation abounds about Barnard’s motivation, ranging from an offer to be the Democratic gubernatorial nominee to Barnard’s sense of self-preservation once he read the writing on the wall that Tweed’s ship was sinking (Lynch 1927: 375; Ackerman 2005: 201; Hershkowitz 1978: 186-189). The reformers were not content to rely on Tweed’s judges to achieve their ends. Lead by Samuel Tilden, the reformers picked their own friendly judges to handle the upcoming trials. Judge Charles Daly, who presided over the trial of Mayor Oakey Hall, received encouraging ex parte communications from Attorney General Francis Barlow. Judge Daly’s brother-in-law, Judge John Riker Brady issued a bench warrant for Tweed’s arrest and ruled that Tweed’s defense team did not need to receive a list of witnesses in the trial (Hershkowitz 1978: 210, 218-224). Judges Barnard, Cardozo, McCunn, and Hackett were either impeached or resigned while facing impeachment from the Judiciary Committee of the State Assembly. With the judiciary cleared of his strongest supporters, Tweed was found guilty and eventually died in prison.

 In Kansas City, discord between Pendergast and Governor Lloyd Stark resulted in Stark’s appointment of hostile judges to vacant seats. These judges refused to turn a blind eye to the electoral system biasing the regime depended on. Judge Allen C. Southern of the Circuit Court of Jackson County, an anti-machine Democrat from Independence, convened a grand jury that moved against gambling and ultimately brought 167 indictments against machine politicians and henchmen. Southern acted during a six-week period in the spring of 1937 when his turn, under a rotation system, came to exercise state criminal jurisdiction in Jackson County. He excluded Jackson County Prosecuting Attorney Thomas Graves, a Pendergast supporter, from the grand jury room to prevent him from tying up proceedings by introducing dozens of insignificant cases that had nothing to do with machine activities (Larsen 1994, 171). In Chicago, Judge Richard Austin heard a challenge to the Chicago Housing Authority’s racially discriminatory practices of confining public housing to the ghettoes. Judge Austin was a former machine loyalist and legal protégé of Daley who had run unsuccessfully for governor in 1956. He believed that the mayor had not supported him adequately in that contest. Given how important segregation was to maintaining Chicago’s coalition, allowing this case to proceed was a serious threat (Trounstine 2008, 199–201). Though Austin had never previously favored plaintiffs in desegregation cases, in the challenge to the housing authority he was zealous in his support of this case (Biles 1995, 171–173).

Sometimes federal courts offered a more receptive ear that could be counted on to challenge the machine. Johnny Lazia, a key member of the Pendergast machine, was convicted of tax evasion in federal court. Investigations into election fraud were launched by U.S. Attorney Maurice Milligan in federal court. Juries had to be drawn from areas outside of Kansas City because the initial jury pool consisted entirely of city workers tied to the machine (Milligan 1948: 148). Perhaps most famously, the *Shakman* series of cases in Chicago gradually eliminated the machine’s ability to use patronage positions. These federal civil cases, though they took over a decade to be fully implemented, struck right at the heart of the machine’s control. In each of these instances, the opponents of the machine used the judiciary to achieve their own ends, co-opting the valuable institution. This is not the only possible outcome, though.

*Disarmament*

 In some instances, opponents of political machines could opt to “disarm” the judiciary by removing or severely limiting local control over the make-up of the judiciary. Kansas City is highly instructive in this regard. Tom Pendergast was indicted for election fraud in 1939, signaling the end of the Pendergast machine. The following year, in 1940, the Nonpartisan Selection of Judges Court Plan (more commonly known as the Missouri Plan) was enacted by the public. It applied only to appellate judges and trial court judges in the city of St. Louis and Jackson County (Kansas City). Judges would now be selected by the governor from a list of candidates provided by a judicial nominating commission. Local control over selection of judges in Kansas City was gone and with it, the ability of local regimes to manipulate the personnel through controlling access to the bench.

*Going Rogue*

 At other times, after the collapse of the political machine, the machine politics of the judiciary continue, although less connected to a particular electoral goal. Chicago is a good example of this. After the collapse of the Democratic machine in the 1970s, the manipulation of court outcomes to benefit some individuals and harm others did not disappear. In the 1980s, two major federal stings revealed extensive corruption in the Chicago judiciary. In 1983, the U.S. Attorney in Chicago announced indictments of three Cook County judges as a result of an extensive undercover investigation dubbed Operation Greylord. Over the next couple of years, the number of indicted judges would climb to seventeen along with over one hundred others from the courts. By the time the prosecutions were completed, a total of 95 people, including 12 judges were convicted (Manikas 1999). The judges were convicted of accepting bribes in order to fix cases and allowing lawyers to engage in hustling of clients. What distinguishes these cases from the earlier examples of regime control is that they are aimed primarily at enriching the judges, not advancing a particular political coalition. The pattern of behavior from the machine days remains, but it is unfocused and less partisan.

In Operation Gambat, another Chicago corruption investigation that was conducted a few years after Operation Greylord, the political connections were more extensive, but still not at the level of the Daley machine. Three judges were convicted for accepting bribes from First Ward politicians to fix murder cases, zoning disputes, and civil cases. First Ward Alderman Fred Roti, for example, solicited $75,000 to fix a 1981 murder case involving a Chinatown gang (Walsh 1990; McCormick and Barrett 1990). In these cases, there was a clear connection between the acts of corrupt judges and the wishes of political leaders. Nonetheless, as the U.S. Attorney in the case noted, “this was boutique corruption. This was a very sophisticated *group of individuals*” (Johnson 1990, italics added). The scope of the corruption was far smaller than in the earlier case studies. Rather than city-wide, the corruption operated only at the ward level on a handful of occasions. The judiciary remained an effective tool, but one largely without guidance, having “gone rogue.”

**Conclusion**

 State trial courts have largely been left out of the conversation on regime politics. The time has come to bring them back into the fold. Though the circumstances considered above are limited to political machines and highlight the most drastic ways in which courts and regimes are intertwined, there are still implications that move beyond these case studies. Methods of judicial selection vary from jurisdiction to jurisdiction, but no method of selection completely eliminates the role of politics. Perhaps an emphasis is made in selecting judges that are receptive to the plaintiff’s bar in civil cases. Or that are going to impose severe sentences in criminal cases. These choices are themselves political. More directly related, a number of city-level regimes have emphasized growth strategies over the past forty years. Having judges who are receptive to the arguments of developers and hostile to anti-growth advocates can have a real and substantial impact on the outcomes of local politics. These types of links between trial courts and political regimes may not be as explicit as those found in political machines, but it is worth further exploration. This study has demonstrated that trial courts *can* be useful to local regimes and *were* for political machines. Future research should examine whether and how those connections continue today in non-machine environments.

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1. I use the term regime here rather than government intentionally. Regimes are “the collaborative arrangements through which the local governments and private actors assemble the capacity to govern” (Trounstine 2008, 24). The concept of regime acknowledges that both public and private actors influence the ways in which governance occurs. [↑](#footnote-ref-1)
2. The impact of the method of selection raises a number of interesting questions, but ones which are unfortunately beyond the scope of this study. [↑](#footnote-ref-2)
3. In New York, the Supreme Court is the trial court of general jurisdiction. The court of last resort is called the Court of Appeals. [↑](#footnote-ref-3)
4. It is likely that Fisk was mostly upset that he did not get access to the discounted shares himself (Hershkowitz 1977, 143–144). [↑](#footnote-ref-4)