Party Capability versus Court Preference: Why Do the "Haves" Come Out Ahead?—An Empirical Lesson from the Taiwan Supreme Court

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Using civil appeals data on Taiwan's Supreme Court (TSC), this article revisits the well-known question of whether the "haves" come out ahead in litigations. We first show that the higher-status litigants indeed mobilized stronger legal representation and obtained more victories than the lower-status litigants. However, we submit that that the party capability theory cannot fully explain the advantages the "haves" enjoyed over the "have-nots." Further analysis reveals that the TSC's exercise of discretionary jurisdiction also played an important role by strongly favoring the governmental litigants at the agenda-setting stage. We argue that the TSC's preference in this regard was induced by the TSC judges' self-identification as part of government. In conclusion, our empirical investigation shows that both party capability and court preference contribute to influence the outcomes of appeals. (*JEL* K4)

1. Introduction

In his seminal article "Why the 'Haves' Come Out Ahead," Marc Galanter (1974) suggested that parties with superior resources (the "haves") can obtain more success in courts than less-privileged parties (the "have-nots") because the "haves" can mobilize stronger legal teams, and have richer litigation experience. This "party capability theory" had stimulated a series of empirical investigations, both on different levels of courts and in various jurisdictions. Virtually all empirical studies on the party capability

theory adopted the approach of using the type of litigant as a proxy for the haves-versus-have-nots distinction.

At the trial courts level in the United States, Wanner (1974) studied civil lawsuits and found that organizations have better abilities to mobilize the law by using the courts. At the appellate level, relying on data collected from a longitudinal study of 16 state supreme courts over the period 1870–1970 (Kagan et al. 1977), Wheeler et al. (1987) discerned a general pattern that the presumed stronger parties tend to enjoy more successes. Songer and Sheehan (1992) studied the federal courts of appeals and found that the litigants' strength disparity significantly affects their chance of success.

On the other hand, another strand of studies questioned the adequacy of the party capability theory. These studies argued that the difference in success rates of various types of litigants not only derives from their relative resources but also reflects the ideological preference of the courts. For example, Sheehan et al. (1992) analyzed 10 types of litigants in the US Supreme Court over a period of 36 years, and found that it is the changing ideological composition of the court that influences the success of different types of litigants, not their resource disparity. They showed that the cases initiated by the little guys against businesses or governments are more likely to win the support from a court composed of a liberal majority.

Outside the United States, the party capability theory and the court preference thesis find their respective support. McCormick (1993), observing all reported decisions of the Canadian Supreme Court between 1949 and 1992, found that the parties of higher status indeed come out ahead. In studying the English Court of Appeal, Atkins (1991) also showed a similar result: governments are more successful as litigants on appeal than are business corporations, which in turn win more than individuals. On the other hand, Haynie (1995) showed that the "have-nots" enjoy more success than the organizational litigants before the Philippine Supreme Court, because the Court, operating in a developing society, intentionally helps the socially disadvantaged litigants in an effort to maintain social stability and promote its own legitimacy. In a more recent study of the Israeli High Court of Justice, Dotan (1999) showed that when the "have-nots" are represented by legal counsel, the "haves" do not appear to be more successful in the courts. Dotan also argued that ideological propensities of the judges and considerations of institutional autonomy can even out the inherent inferiority of the "have-nots" in litigation.

Taken together, these studies suggest that both the disparity of party capability and the preference of the court influence case outcomes. The two factors' relative explanatory power depends not only on the institutional character of the court but also the socioeconomic and political environment under which the court functions. In this article, we report the results of an independent empirical study by observing civil appeals before the Taiwan Supreme Court (TSC) during 2008–09. We start by asking three basic questions: (1) whether higher-status parties obtain stronger legal representation than lower-status parties, (2) whether and

to what extent the disparity of legal representation, if any, affects case outcomes, and (3) whether the "haves" still come out ahead after any disparity of legal representation is controlled for.

Although our analytic framework is mostly parallel to prior studies on this subject, three features distinguish our study. First, we study not only which party obtains the final victory but also whose case is selected by the highest court, which controls its own docket for decisions on the merits. This feature enables us to analyze the interrelationship between the agenda-setting process and decision process in light of asymmetry of parties' status.[1] Second, prior studies focus on courts in the common law system, which operates under the normative assumption that courts are passive institutions, but in reality appoint jurists with diverse backgrounds and various careers directly to the appellate courts. Our study examines a civil-law jurisdiction—Taiwan—where its supreme court judges are professional officials with virtually identical training and career paths. This feature allows us to analyze to what extent the party capability theory and the judicial preference thesis, the two theories derived from the common law system, can also explain case outcomes under a civil-law environment. Finally, most studies assume, instead of show, that the quality and quantity of legal service mobilized by the upperdogs are superior to those recruited by the underdogs. To test this assumption, we collect data on the characteristics of the legal service retained by various types of litigants. Therefore, we can also analyze to what extent the higher success rates enjoyed by the "haves," if any, are attributed to their advantage in legal representation.[2]

In general, our empirical results show that both the party capability theory and the court preference thesis contribute to the better outcome that the litigants of higher status enjoy before the TSC. Specifically, we find that the "haves" indeed have stronger legal representation and obtain more victories than the lower-status litigants. However, our study also shows that the party capability theory cannot fully explain the advantages the "haves" enjoy over the "have-nots." Further analysis reveals that the TSC's exercise of discretionary jurisdiction also plays an important role in that the TSC strongly favors the government and is biased against its

1. Most studies on this topic examine only the merits process. The few papers focusing on the agenda-setting process include Caldeira and Wright (1988), McGuire and Caldeira (1993), Flemming and Krutz (2002), and Black and Boyd (2012). As far as we know, our article is the first to investigate this issue in both the agenda-setting and the merits processes.

2. Some literature has indeed shown that better legal representation results in better case outcomes. For example, Haire et al. (1999) use US Courts of Appeals data to show that attorneys whose experience has not passed a certain threshold are less successful in court rulings. Szmer et al. (2007) use data from the Canadian Supreme Court to show that prior litigation experience and litigation team size have a positive relationship with the court's decisions in the non-reference cases, that is, the cases other than reference cases, which are requested by the executive or legislative branches to issue the Court's advisory opinions for disputes without a case or controversy.

opponents in its jurisdictional decisions. We argue that the TSC's preference in this regard is induced by the TSC judges' self-identification as part of the government. We also provide the explanation that the discretionary nature and free-of-review status of the TSC's jurisdictional decision creates room for such a regime effect to exist.

This article proceeds as follows. The second section introduces relevant background about the TSC. The third section describes the data and explains our methodology. The fourth section reports our findings. The fifth section discusses the results and their implications. The sixth section concludes.

2. Background

Taiwan has a three-tiered court system, and the courts for each tier are divided into civil and criminal divisions. An independent system of tribunals—the administrative courts—hears public law cases, which mainly arise from disputes between citizens and the government concerning the legality of governmental acts. This article is limited to the civil cases.

As a civil-law country, Taiwan's civil procedure is predominantly influenced by a German way of thinking (Huang 2009). Both the courts of first instance—the district courts—and the courts of second instance—the high courts—adjudicate fact and law. Further appeal to the TSC is limited to questions of law only. After the 2003 Amendment of the Taiwan Code of Civil Procedure (TCCP; for its English translation, see Huang and Thurston 2006), the TSC exercises mainly discretionary jurisdiction, which means that the TSC has broad discretion on whether to hear a case on the merits.[3] Only when the TSC believes that the appeal involves legal questions of principal importance will it render a judgment on the merits. Otherwise the TSC will directly dismiss the appeal by a procedural ruling.

Besides the above, several procedural requirements are applicable to appeals taken to the TSC. Nevertheless, Eisenberg and Huang (2012) showed that procedural dismissal usually results from the requirement of failure to specify how the judgment in issue contravenes the law. Specifically, when the defeated party at the high court appeals to the TSC, the appellant must be represented by an attorney to submit a well-written appeal brief. If the TSC finds the appeal brief fails to raise an important legal issue, it will dismiss the appeal by a procedural ruling. Eisenberg and Huang (2012) found that this procedural requirement of adequate appeal brief has become the most important instrument for the TSC to control its own docket.

The civil division of the TSC contains several panels, each of which consists of five judges. TSC judges are all professional judicial officers,

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3. Although the TSC also exercises mandatory jurisdiction, it is limited to narrowly defined, serious procedural errors, such as lack of subject matter jurisdiction or exclusive jurisdiction, as prescribed in Article 469 of the TCCP.

who followed a virtually identical career path of passing the Judge Examination Test, serving in the district courts at the early stage of their career, being elevated to the high courts afterwards and finally reaching the top of the judiciary pyramid. Taiwan courts do not have authority to review constitutional issues, which are within the exclusive jurisdiction of the Constitutional Court (the Council of Grand Justices).[4] Other than constitutional issues, TSC has the final say on how a case should be disposed of.

Article 474 of the TCCP provides that the TSC in principle should hold oral-argument hearings for the appeals to be decided on the merits. But, in practice, the TSC virtually never holds such hearings.[5] As a result, the TSC always decides cases solely based on the parties' briefs and the dossier collecting all materials reviewed by the lower courts. If the TSC finds that the court of second instance commits an error of law, it issues a reversal judgment vacating the judgment and remanding the case to the lower court. On the other hand, when the TSC determines that no erroneous application of law is involved, it issues an affirmance judgment. It should be noted that whereas the appellant is required to be represented by attorneys, such a requirement is not applicable to the appellee as long as no oral argument is held. Consequently, the appellee can choose whether to seek legal representation before the TSC.

Like the highest courts exercising appellate jurisdiction in many countries, the TSC has a strong propensity to affirm. Eisenberg and Huang (2012) showed that the appellant's win rate (the percentage of cases reversing the judgments of high courts in all appealed cases) from 1996 to 2008 stayed around 30% with small fluctuations. The TSC's propensity to affirm constitutes an obstacle for the defeated party at the high court to overcome. This obstacle, along with the fact that the TSC mostly exercises discretionary jurisdiction, creates an ideal setting for us to conduct the empirical test of the relative role played by the asymmetric capability of parties as well as the court's preference to select cases for decision on the merits on case outcomes.

3. Data and Methodology

3.1 Scope of Cases under Examination

We take advantage of the facts that the TSC is bound to issue written opinions in every appeal regardless of how the case is disposed of and that

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4. For an introduction to Taiwan's Constitutional Court, visit the official website at http://www.judicial.gov.tw/constitutionalcourt/EN/p01_01_01.asp (last visited January 25, 2012). If a court believes that a law bearing on the resolution of the pending case is unconstitutional, the proper course of action is for it to suspend the litigation and refer the issue to the Constitutional Court.

5. This provision concerning hearing is part of the 2003 Amendments of the TCCP. Over the 8 years since the effective date of such amendment, the TSC has held hearings in only two cases.

virtually all written opinions are publicly reported on the On-Line Decision Search System (OLDSS).[6] Moreover, about 95% of all appeals taken to the TSC are disposed of by either a procedural ruling or a judgment on the merits.[7] These advantages allow us to assemble a dataset which is adequately representative of the TSC adjudicative activities. Unlike prior studies which often eliminated summary dispositions and focused only on decisions on the merits, our study includes the procedural dismissals in our dataset. We can thus observe not only the final outcomes but also the TSC's agenda-setting.

Using the OLDSS, we initially assemble a dataset of all TSC decisions terminated in 2008 and 2009 on appeals taken from the high courts' judgments, 5236 in total. Of the 5236 cases, 109 are not reported on the OLDSS due to privacy concerns.[8] Given that our main interest is to evaluate the impact of party status on case outcomes, to avoid the difficulty of categorizing litigants when multiple parties of varying status are on the same side, we exclude the cases involving multiple parties on the same side and focus on the cases that involve a single appellant against a single appellee. Moreover, to estimate the relative success rates of the "haves" and the "have-nots" in the TSC, it is essential to observe the types of cases where both the "haves" and the "have-nots" could become litigants. Therefore, we further exclude cases concerning family or inheritance disputes where only natural persons could be parties. Accordingly, we include 2396 cases in our dataset and start the process of reading the decisions, coding available information, and collecting more information on the litigants' attorneys.

3.2 Decision Coding and Data Description

Table 1 shows the main picture of the 2396 cases in our data.

The first and most important variable is "type of litigant." Because of unavailability of information on each litigant's resources, we follow the strategy adopted by most studies of assigning litigants to several classes and making assumptions about which class is usually the stronger party. In adopting this approach, and consistent with previous work, we assume that the governments have greater capability than the businesses

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6. The On-Line Decision Search System (OLDSS) is an official court decision search system established by the Judicial Yuan, the highest judicial office in Taiwan. This system is designed to report *all* court decisions, except for the cases involving protected secrets or privacy. Prior studies using the OLDSS indicate that whereas occasionally decisions cannot be found due to administrative omissions, the OLDSS is extremely reliable and such omissions are rare.

7. Eisenberg and Huang (2012) showed that the percentage of appeals not pursued to completion, that is, terminated by settlement or voluntary withdrawal, was stable at around 7% from 1996 to 2008.

8. When the cases involve protected secrets or privacy, those decisions, albeit listed in the OLDSS, cannot be downloaded because they are characterized as being protected from publication by law.

Table 1. Data Description

Variable			Freq.	Percent (%)
Methods of case disposition (2396)[a]		Procedural dismissal	1468	61.27
		Affirming judgment	273	11.39
		Reversing judgment	655	27.34
Type of appellant (2396)		Individual	1244	51.92
		Business or organization	1036	43.24
		Local gov.	65	2.71
		Central gov.	51	2.13
Type of appellee (2396)		Individual	1041	43.45
		Business or organization	1075	44.87
		Local gov.	135	5.63
		Central gov.	145	6.05
Type of dispute (2396)		Torts	284	11.85
		Other contracts	1054	43.99
		Sales	306	12.77
		Construction	358	14.94
		Commercial disputes	163	6.80
		Real property	231	9.64
Number of appellant's attorneys (2396)		One	1801	75.17
		Two	413	17.24
		Three or above	182	7.60
Number of Appellee's Attorneys (2396)		Zero	1102	45.99
		One	912	38.06
		Two	269	11.23
		Three or above	113	4.72
Court panel (2396)		Court panel 1	178	7.43
		Court panel 2	232	9.68
		Court panel 3	326	13.61
		Court panel 4	372	15.53
		Court panel 5	425	17.74
		Court panel 6	424	17.70
		Court panel 7	439	18.32
Time to case disposition (2396)		50–90 days	567	20.33
		91–120 days	552	23.45
		121–180 days	748	33.85
		181–365 days	414	17.40
		366 days or above	115	4.97
The Number of TSC Appearances of appellant's lawyers	lead counsel (2396)	0–5	447	18.66
		6–10	352	14.69
		11–20	630	26.29
		21–40	551	23.00
		More than 40	416	17.36

(continued)

Table 1. Continued

Variable			Freq.	Percent (%)
	Second chair (595)	0–5	282	47.39
		6–10	80	13.45
		11–20	102	17.14
		21–40	78	13.11
		More than 40	53	8.91
	Third attorney (182)	0–5	109	59.89
		6–10	19	10.44
		11–20	27	14.84
		21–40	18	9.89
		More than 40	9	4.95
The number of TSC Appearances of appellee's lawyers	lead counsel (1294)	0–5	197	15.22
		6–10	184	14.22
		11–20	301	23.26
		21–40	298	23.03
		More than 40	314	24.27
	Second chair (382)	0–5	166	43.46
		6–10	59	15.45
		11–20	59	15.45
		21–40	67	17.54
		More than 40	31	8.12
	Third attorney (113)	0–5	69	61.06
		6–10	13	11.50
		11–20	13	11.50
		21–40	7	6.19
		More than 40	11	9.73

Source: TSC OLDSS opinions, 2008–2009.
[a]Number of observations.

(organizations), which in turn are stronger than the individuals. As a result, each appellant and appellee is classified as belonging to one of four major types: individual litigants, businesses and other organizations, local governments, and the central government. Note that most parties are either individual litigants or businesses. They account for 51.92% and 43.24% of all appellants, respectively, and 43.45% and 44.87% of all appellees, respectively.

The next major variable in our dataset is the method of case disposition. We first treat success and failure in the most straightforward way, coding simply whether the appellant successfully persuades the TSC to vacate the high court's unfavorable decision. This coding allows us to compute the percentage of cases reversing the judgment of high courts in all appeals, which we refer to as "the appellant's win rate." However, this measure overlooks an important aspect of the process of appealing to the TSC— the procedural dismissal. Note that the dismissal rate—the percent of

cases dismissed by a procedural ruling—is 61.27%, indicating that the TSC retains strong control over its own docket. Because the mechanisms of procedural dismissal and adjudication on the merits are not identical, we further refine the success/failure dichotomy into a two-stage decision process. The first stage is to observe whether the appeal is dismissed procedurally and, if not, we continue to examine whether the appellant wins the case on the merits. To distinguish, we refer to the percent of cases reversing the high courts' judgment in the cases which are adjudicated on the merits as the "reversal rate."

To observe the TSC caseload and to assist our analysis, we initially follow Eisenberg and Huang (2012) to classify all cases into 12 categories, excluding family and inheritance disputes. However, because this classification renders the number of cases in several categories too small to make our subsequent statistical analysis feasible, we regroup all cases into six major categories, including torts, sales, construction, commercial disputes, real property, and other contractual disputes. The results are also reported in Table 1.

Finally, in order to, firstly, observe whether the quality and quantity of legal service mobilized by different types of litigants vary, and, secondly, to take this factor into our subsequent analysis, we collect information not only about the status of legal representation for different types of litigants, but also about the background of these attorneys. Specifically, for the appellant who is required to be represented by a lawyer, we code the size of his/her legal team, that is, whether the appellant is represented by a single lawyer, two lawyers, or three lawyers and more. As to the appellee, since legal representation is not mandatory, we first code whether he/she is represented and, if yes, the size of his/her counsel team.

Most lawyers in Taiwan are sole practitioners who usually charge a flat fee for legal representation. There are only a few law firms with the scale of more than 20 lawyers whose clients are mostly corporations to be charged by hours. For litigation representation, such big law firms almost always deploy a legal team of three lawyers, with a partner acting as head counsel, a senior associate responsible for actually handling the case, and a junior associate providing assistance. The rest are law firms of medium size where several lawyers, along with a few associates they hire, share facilities, and cooperate with each other on a case-by-case basis (Huang 2008). Against the above background, despite absence of information about the exact size of the law firm, we can reasonably assume that where a party is represented by only one attorney, that attorney most likely operates business on his/her own. When a party is represented by a team of three attorneys, the service is usually provided by a large law firm. Accordingly, by observing how many attorneys represent a party, we can use that information as a proxy for the size of the law firm behind that party.

Besides the quantity of legal representation, we collect information about how many times each attorney in our sampled cases has appeared before the TSC prior to the case under examination since 1996. This

measure purports to capture the lawyer's expertise as well as experience of appearing before the TSC. Our assumption is that the more often an attorney represents clients to appeal to the TSC, the more expertise and experience in TSC practices that the attorney possesses. Through this measure, we can explore whether there is any systematic difference in the quality of legal service received by different types of litigants.

3.3 Methodology

Our empirical study consists of three parts. The first part evaluates the strength of legal representation for each type of litigant. We examine both the quality and quantity of legal service across types of litigants by comparing the size of their legal team and the mean number of TSC appearances. We further explore the pattern of both the appellant's and the appellee's decision of seeking legal representation through a multivariate analysis. This analysis enables us to test the popular assumption that higher-status parties tend to mobilize stronger legal service.

We next explore whether there exists any systematic difference in case outcomes among various types of litigants. We initially use the most straightforward measure of the appellant's win rate to observe case outcomes. As explained above, we follow the often-adopted approach of classifying litigants into four types: (1) the central government, (2) local governments, (3) businesses and other organizational litigants, and (4) individuals. Moreover, we assign a given score to each type of litigant and then produce an index of status differential. Specifically, the central government is assigned a score of 4, a local government a score of 3, a business a score of 2, and an individual a score of 1, respectively. By these given scores, we create an index of status differential to reflect the adversarial parties' capability differential under different match-ups, ranging from the maximum of +3 (the central government as appellant against an individual as appellee) to the minimum of −3 (an individual as appellant against the central government as appellee).

After showing the difference in the status of legal representation and the win rate among different types of litigants, the third part of our empirical investigation takes all factors into consideration and examines the question of whether the "haves" still come out ahead after any superiority of legal representation has been controlled for with a multivariate regression model. Our basic theory is that if the party of higher status still obtains more successes than the party of lower status after any disparity of legal representation has been taken into consideration, the advantage enjoyed by the "haves" over the "have-nots" cannot be entirely attributed to their capability differential.

To further explore the question of why the "haves" come out ahead and test the validity of our basic theory, we refine our analysis by dividing the case outcomes into two stages. The first stage is to observe whether the TSC decides to hear an appeal on the merits. If the TSC grants review, the second stage is to examine whether the TSC reverses or affirms

the lower court's judgment. By means of this two-stage observation, we can make the role of a party's status as well as its legal representation in the appellate process more transparent.

4. Results

4.1 Characteristics of Legal Service Mobilized by Different Types of Litigants

Table 2 reports the distribution of the number of attorneys representing different types of litigants. First note that three quarters of the appellants whose legal representation is mandatory are represented by a single attorney, which reflects the fact that most lawyers are sole practitioners in Taiwan. More importantly, the frequency of hiring a sole practitioner instead of relying on a team of two or more by an individual litigant is higher than that by businesses/governments (77.81% v. 72.31%). This result suggests that the "haves" (businesses and governments) are more likely to mobilize more attorneys than the "have-nots."

The quantitative advantage of legal service enjoyed by the "haves" over the "have-nots" is more apparent on the appellee's side, where legal representation is not mandatory. Insofar as the appellee's side is concerned, the governments are more likely to be represented than the businesses, which in turn are more likely to be represented than individuals. Moreover, the probability of hiring a legal team of two or more attorneys by the governments/businesses to defend their victories is about twice that of individuals (19.93% v. 10.76%).

Although the above descriptive statistics are consistent with the conventional wisdom that the "haves" are more capable of deploying more sizable legal troops than the "have-nots," it does not tell the whole story. Our further analysis reveals that the decision of seeking legal representation is not only affected by the litigant's own type but also highly related to the type of its opponent. Specifically, we adopt a logit regression as follows:

$$N_{di}^* = \beta_0 + \sum_j^3 \beta_{1j} A_{ij} + \sum_j^3 \beta_{2j} E_{ij} + \sum_j^5 \beta_{3j} (TYPE_{ij}) + \varepsilon_i, \, N_{di} = 1[N_{di}^* > 0],$$

(1)

where the subscript i indicates the observation for the ith case, variables A_i and E_i denote two sets of binary dummies for types of appellant and appellee, respectively, $TYPE_i$ is a set of binary variables for type of dispute, $1[M]$ is the indicator function equal to 1 if the event M holds and zero otherwise, the dependent variable N_{di} is "whether the appellant is represented by d attorneys or more," and N_{di}^* is the latent variable of N_{di}. Specifically, we consider the regressions in which $d = 2$ and $d = 3$, respectively. The results show, as reported in Table 3, that business appellants are more likely to hire two or more attorneys than individual appellants. More interestingly, the appellant is more likely to employ a legal team of two or more attorneys when the appellee is the central

Table 2. Number of Attorneys Representing Different Types of Litigant

Type of litigant	Appellant				Appellee				
	Number of attorneys				Number of attorneys				
	1	2	3 or above	Total	None	1	2	3 or above	Total
Individual	968 (77.81%)	192 (15.43%)	84 (6.75%)	1244	574 (55.14%)	355 (34.10%)	85 (8.17%)	27 (2.59%)	1041
Nonindividual	833 (72.31%)	221 (19.18%)	98 (8.51%)	1152	528 (38.97%)	557 (41.11%)	184 (13.58%)	86 (6.35%)	1355
Business	743 (71.72%)	200 (19.31%)	93 (8.98%)	1036	442 (41.12%)	416 (38.70%)	152 (14.14%)	65 (6.05%)	1075
Local gov.	52 (80.00%)	11 (16.92%)	2 (3.08%)	65	36 (26.67%)	74 (54.81%)	17 (12.59%)	8 (5.93%)	135
Central gov.	38 (74.51%)	10 (19.61%)	3 (5.88%)	51	50 (34.48%)	67 (46.21%)	15 (10.34%)	13 (8.97%)	145
Total	1801 (75.17%)	413 (17.24%)	182 (7.60%)	2396 (100.00%)	1102 (45.99%)	912 (38.06%)	269 (11.23%)	113 (4.72%)	2396 (100.00%)

Note: Percentage within each type of litigant is listed in parentheses.

Table 3. Logistic Regression of the Probability for Appellant to Hire More Than One or More Than Two Attorneys (Marginal Effect)

| | The number of appellant's lawyers | | | |
| | Two or above (=1, otherwise =0) | | Three or above (=1, otherwise =0) | |
	Marginal effect	Std. err.	Marginal effect	Std. err.
Type of appellant (A)				
Business	0.043	(0.020)**	0.017	(0.012)
Local gov.	−0.040	(0.054)	−0.042	(0.024)*
Central gov.	0.012	(0.065)	−0.010	(0.037)
Type of appellee (E)				
Business	0.058	(0.021)***	0.034	(0.013)***
Local gov.	0.050	(0.045)	0.039	(0.033)
Central gov.	0.097	(0.044)**	0.049	(0.033)
Type of dispute (TYPE)				
Other contract	0.009	(0.030)	0.003	(0.017)
Sales	−0.042	(0.035)	−0.013	(0.019)
Construction	0.014	(0.037)	−0.022	(0.017)
Commercial sisputes	0.054	(0.047)	−0.015	(0.021)
Real property	−0.010	(0.039)	-0.027	(0.018)
Observations	2396		2396	
Pseudo R-squared	0.010		0.015	

Note: Standard errors are reported in parentheses. *, **, and *** represent significance at the 10%, 5%, and 1% nominal levels, respectively. The result is based on Equation (1).

government or business than when the appellee is individual. This result suggests that when facing more powerful opponents, appellants tend to organize a larger legal team.[9]

The same pattern appears on the appellee's side. We similarly analyze the factors affecting the appellee's decision to hire at least one attorney, to hire at least two attorneys, and to employ a team of at least three attorneys under the following logit regression:

$$N_{di}^* = \beta_0 + \sum_j^3 \beta_{1j}A_{ij} + \sum_j^3 \beta_{2j}E_{ij} + \sum_j^5 \beta_{3j}(TYPE_{ij}) + \beta_4 HIRE_i + \varepsilon_i,$$
$$N_{di} = 1[N_{di}^* > 0]. \tag{2}$$

The specifications in equation (2) are essentially identical to those in equation (1), except for addition of the dummy variable, $HIRE_i$, of whether the appellant hires two or more attorneys, and N_{di} now is "whether the appellee is represented by d attorneys or more," $d = 1,2,3$.

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9. We also analyze the number of attorneys for the appellant by using zero-truncated negative binominal regression in Table A1. The results are consistent with the pattern in Table 3.

The results, as reported in Table 4, show that both the governmental appellees and business appellees are more likely than individual appellees to seek legal representation as well as to have multiple attorneys.[10] Moreover, the appellee is not only more likely to be represented but also more likely to have multiple attorneys in facing the government or business than in facing the individual appellant as opponent.

Note that when the appellant files an appeal to the TSC, although the appellant knows the "type" of the appellee, he/she does not know in advance whether the appellee will seek legal representation. On the other hand, when the appellee receives the notice of appeal, the appellee knows not only the "type" of the opponent but also the opponent's legal team. Therefore, we do not include the status of the appellee's legal representation as an explanatory variable in equation (1), whereas the appellant's legal representation enters as an independent variable in equation (2). Our finding that a party's decision of seeking legal representation is affected by the opponent's capability, as reflected by the opponent's "type," is also supported by the fact that when facing an appellant with two or more attorneys instead of just one attorney, the appellee not only is more likely to seek legal representation but is also more likely to be represented by multiple attorneys.

In addition to recruiting a more sizable legal team, the "haves" also tend to retain counsel with more TSC experience than the "have-nots." Table 5 reports the average number of TSC appearances by attorneys for different types of litigants in our data during the period of 1996 to 2008. Overall, the lawyers representing nonindividual litigants have more experience before the TSC than those representing individual litigants. Specifically, on the appellant's side, in the cases where the appellant hires only one attorney, the attorneys representing nonindividual litigants are, on average, 1.2 times more experienced than the attorneys representing individual litigants (25.16 v. 20.87). In the cases where the appellant hire more than one attorney, the legal teams serving the "haves" are also generally more experienced than the teams representing the "have-nots."[11]

A further look into the three different types of nonindividual litigants reveals that significant disparity exists. The legal team representing the local government is the least experienced, even inferior to the legal team organized by the individual appellant. On the other hand, the central government's legal team is by far the most experienced. Its lead attorney in both the two-attorney team and the three-attorney team is over two

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10. We also analyze the number of attorneys for the appellee by using zero-inflated negative binominal regression in Table A2. The results are consistent with the pattern in Table 4.

11. For robustness purpose, we also observe the number of TSC appearances of the most experienced member of the legal team through a negative binomial regression. The results are consistent with the pattern in Table 5. The details of this regression are available upon request.

Table 4. Logistic Regression of the Probability for Appellee to Seek Representation (Marginal Effect)

| | The number of appellee's lawyers | | | | | |
| | One or above (=1, otherwise=0) | | Two or above (=1, otherwise=0) | | Three or above (=1, otherwise=0) | |
	Marginal effect	Std. err.	Marginal effect	Std. err.	Marginal effect	Std. err.
Type of appellant (A)						
Business	0.082	(0.023)***	0.057	(0.017)***	0.014	(0.008)*
Local gov.	0.067	(0.063)	0.099	(0.060)*	0.034	(0.036)
Central gov.	0.310	(0.051)***	0.242	(0.076)***	0.142	(0.064)**
Type of appellee (E)						
Business	0.106	(0.023)***	0.075	(0.017)***	0.026	(0.009)***
Local gov.	0.254	(0.037)***	0.090	(0.045)**	0.050	(0.032)
Central gov.	0.190	(0.039)***	0.111	(0.045)**	0.092	(0.037)**
Type of dispute (TYPE)						
Other contract	0.108	(0.034)***	0.039	(0.026)	0.005	(0.011)
Sales	0.080	(0.042)*	-0.012	(0.030)	-0.014	(0.011)
Construction	0.086	(0.042)**	-0.010	(0.028)	-0.016	(0.010)*
Commercial disputes	0.084	(0.049)*	0.031	(0.040)	0.023	(0.022)
Real property	0.090	(0.043)**	-0.064	(0.027)**	-0.033	(0.008)***
Whether appellant hires two or more attorneys (HIRE)	0.061	(0.024)**	0.036	(0.017)**	0.023	(0.009)**
Observations	2396		2396		2396	
Pseudo R-squared	0.037		0.040		0.066	

Note: Standard errors are reported in parentheses. *, ** and *** represent significance at the 10%, 5%, and 1% nominal levels, respectively. The result is based on Equation (2).

Table 5. Mean Number of TSC Appearances by Attorneys for Different Types of Litigants during 1996–2008

	Appellant						Appellee					
	Single	Two-attorney team		Three-attorney team			Single	Two-attorney team		Three-attorney team		
		First	Second	First	Second	Third		First	Second	First	Second	Third
Individual	20.87 (968)	26.79	10.76 (192)	26.88	18.69 (84)	11.04	23.77 (355)	35.77	10.91 (85)	37.78	15.15 (27)	10.93
Nonindividual	25.16 (833)	33.15	14.0 (221)	33.29	16.18 (98)	9.76	27.77 (557)	34.15	12.51 (184)	34.80	22.12 (86)	10.43
Business	25.31 (743)	32.47	13.64 (200)	32.55	15.23 (93)	9.57	28.67 (416)	33.55	12.49 (152)	33.46	20.43 (65)	9.12
Local gov.	23.83 (52)	18.73	7.55 (11)	18.08	11.5 (2)	5.50	22.57 (74)	38.30	13.88 (17)	37.68	27.75 (8)	9.50
Central gov.	24.00 (38)	62.60	28.50 (10)	65.15	49.00 (3)	18.33	24.34 (67)	38.60	17.27 (15)	42.61	27.08 (13)	17.54
Total	22.85 (1801)	30.19	12.50 (413)	30.32	17.94 (182)	10.35	25.95 (912)	34.79	12.34 (269)	35.67	20.45 (113)	10.55

Note: The number of observations is listed in parentheses.

times more experienced than his/her counterpart leading the legal team of the individual appellant.

The general pattern on the appellant's side also appears on the appellee's side, although the advantage enjoyed by the nonindividual appellees is less obvious. In the cases where there is only one representing attorney, the attorneys hired by the nonindividual appellees are slightly more experienced than those representing individual appellees. In the cases where a legal team of two or three attorneys is involved, only the legal team representing the central government shows richer experience than the legal team representing the individual appellee. With regard to the other two types of nonindividual parties on the appellee side, the differences between their legal team and that representing individual litigants are not clear-cut.

Taken together, the popular assumption that the "haves" enjoy an advantage over the "have-nots" in both the quantity and quality of legal service is generally supported by our data. According to the party capability theory, this implies that the "haves" should win more often than the "have-nots" before the TSC. We thus continue to explore whether this is true in our data.

4.2 General Observation of Case Outcomes by Different Types of Litigants

Before presenting our econometric results, we make a general observation. Table 6 reports the win rates of different types of appellants. The individual appellant's win rate (22.43%) is clearly lower than the nonindividual appellant's win rate (32.64%). On the other hand, among nonindividual appellants, there is no significant difference in their win rates, except that the governmental appellant's win rate is slightly higher.

Parallel to prior studies (Wheeler et al. 1987; Songer and Sheehan 1992), we use the "net advantage," which is the specific type of litigant's win rate as appellant minus its opponent's win rate as appellant against that type of litigant as appellee, as the measure to compare the success of different types of litigants. As pointed out by Songer and Sheehan (1992), "the net advantage index may be a better indicator of litigation success than the raw rate of success because it is unaffected by the relative frequency that a given class of litigant appears as an appellant rather than as a respondent." Table 7 reports the net advantage of each type of litigant. The order of various parties' net advantage nicely matches the order of their respective capability assumed in this study. Specifically, the assumed weakest litigants—individuals—win 22.43% of the cases they appeal but lose 24.02% of the cases where they are appealed against, resulting in the lowest net advantage of −1.59%. On the other hand, the central government, the assumed strongest type of litigant, successfully overcomes the TSC's propensity to affirm in 35.29% of cases it appeals. Moreover, its success in the lower courts is overturned in only 20.69% of cases where it is appealed against—leading to a highest net advantage of 14.60%. By the same measure, the businesses and the local governments have a net advantage of 0.61% and 11.00%, respectively.

Table 6. Appellant's Win Rate against Different Types of Appellee

Appellant	Appellee					
	Individual	Non-individual	Business	Local Gov.	Central Gov.	Total
Individual	22.02% (713)	22.98% (531)	24.88% (418)	18.18% (44)	14.49% (69)	22.43% (1244)
Nonindividual	28.35% (328)	34.34% (824)				32.64% (1152)
Business	29.53% (298)		34.79% (572)	30.00% (90)	26.32% (76)	32.24% (1036)
Local Gov.	22.22% (18)		43.48% (46)	0.00% (1)	NA (0)	36.92% (65)
Central Gov.	8.33% (12)		43.59% (39)	NA (0)	NA (0)	35.29% (51)

Note: The number of observations is listed in parentheses. Nonindividual refers to the sum of Business, Local Gov., and Central Gov.

Table 7. Net Advantage of Different Types of Litigant

Type of litigant	Win rate as appellant	-	As appellee, opponents' win rate	=	Net advantage
Individual	22.43% (1,244)	-	24.02% (1,041)	=	−1.59%
Nonindividual	32.64% (1,152)	-	29.89% (1,355)	=	2.75%
Business	32.24% (1,036)	-	31.63% (1,075)	=	0.61%
Local gov.	36.92% (65)	-	25.93% (135)	=	11.00%
Central gov.	35.29% (51)	-	20.69% (145)	=	14.60%

Note: The number of observations is listed in parentheses. Nonindividual refers to the sum of Business, Local gov., and Central gov.

Under the above measure of net advantage, both the case outcomes of a specific type of litigant against its own type and the case outcomes of a specific type against another type are included in our analyses. In an effort to further explore the relative advantage enjoyed by different types of litigants, we again follow the approach adopted by Wheeler et al. (1987) and Songer and Sheeham (1992) to focus only on the cases where the appellant and the appellee are of different types. The results are reported in Table 8.

The net advantage by various match-ups of different types of litigants generally supports the finding that the stronger party indeed fares better before the TSC than the weaker party. For example, in the match-up of individual versus business, the business enjoys a net advantage of 4.65% and in the match-up of business versus the central government, the latter has a net advantage of 17.27% over the former. The only exception to this regularity is that the individual litigant enjoys a net advantage, instead of disadvantage, over the central government.

Finally, in line with our basic strategy of measuring relative strength by assigning a given score to each type of litigant first and then producing an

Table 8. Net Advantage for One Type of Litigant Against Another Type of Litigant

Match of different types of litigant			Net advantage		
Individual (418)	v.	Business (298)	Business	by	4.65%
Individual (44)	v.	Local gov. (18)	Local gov.	by	4.04%
Individual (69)	v.	Central gov. (12)	Individual	by	6.16%
Business (90)	v.	Local gov. (46)	Local gov.	by	13.48%
Business (20)	v.	Central gov. (17)	Central gov.	by	17.27%
Appellant success rate for stronger party			=28.40% (328)		
Appellant success rate for weaker party			=23.00% (531)		
Net advantage for stronger party			= 5.40%		

Note: The number of observations with the type of litigant as appellant in a match-up is listed in parentheses.

index of status differential, we analyze the relationship between the appellant's win rate and the index of status differential. The results, as reported in Table 9, clearly indicate a positive relationship between the appellant's win rate and the relative advantage of appellant over appellee, which provides additional support for the party capability theory.

Note that the approach of using the index of status differential makes the above-mentioned individual-versus-central-government exception more transparent. Specifically, in the cases of an individual as appellant against the central government as appellee, which has the most negative index of -3, the appellant's win rate remains at the lowest end of the spectrum, which is consistent with the party capability theory. What really contradicts the theory is the result of the central government as appellant against an individual as appellee. Although that context represents the strongest advantage of appellant over appellee (with an index of $+3$), it nevertheless produces the lowest appellant's win rate of 8.33%.

4.3 Case Outcomes Controlled for Difference in Resources

After showing that the "haves" enjoy advantage over the "have-nots" in legal representation as well as in the win rate, we further explore whether the "haves" still come out ahead after their advantage in legal representation is controlled for. We first evaluate case outcomes by the measure of win rate under a probit regression model as follows:[12]

$$W_i^* = \gamma_0 + \gamma_1 SA_i + \gamma_2 SE_i + \sum_j^5 \gamma_{3j}(TYPE_{ij}) + \gamma_4 ET_i + \sum_j^2 \gamma_5(NA_{ij})$$
$$+ \sum_j^3 \gamma_{6j}(NE_{ij}) + \sum_j^3 \gamma_{7j}(XPA_{ij}) + \sum_j^3 \gamma_{8j}(XPE_{ij}) \qquad (3)$$
$$+ \sum_j^6 \gamma_{9j}(PNL_{ij}) + \varepsilon_i, \ W_i = 1[W_i^* > 0],$$

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12. For robustness purpose, we also use a logit model to run the regression. The results are consistent with the pattern shown in Table 10. The details of this regression are available upon request.

Table 9. Appellant's Win Rate Under Index of Status Differential

Index of status differential (Appellant–Appellee)	Appellant win rate (%)	(N)
−3	14.49	69
−2	23.33	120
−1	25.79	508
0	27.68	1286
+1	31.40	344
+2	36.84	57
+3	8.33	12

where the subscript i indicates the observation for the ith case; the dependent variable, W_i, is coded as 1 if the appellant in the ith case wins the appeal on the merits and is coded as 0 if otherwise; W_i^* is the latent variable of W_i; SA_i, and SE_i denote the scores assigned to the appellant and the appellee, respectively, according to its respective type (1 for individuals, 2 for businesses, 3 for local governments, and 4 for the central government); $TYPE_i$ is a set of binary variables for type of dispute; ET_i is the logarithm of elapsed days to case disposition, used as a proxy for the complexity of the case; and PNL_i is another set of binary dummies accounting for the panel of the court. The variables NA_i, NE_i, XPA_i, and XPE_i are used to control for the quantity and quality of legal representation.[13] Specifically, NA_{i1} (NA_{i2}) is coded as 1 if the appellant in the ith case has two (three or more) lawyers, and is coded as 0 if otherwise; NE_{ij} ($j = 1$, 2) is coded as 1 if the appellee has j lawyers and is coded as 0 if the appellee has fewer than j lawyers; NE_{i3} is coded as 1 if the appellee has three or more lawyers, and is coded as 0 if otherwise. XPA_{ij} and XPE_{ij} represent the experience of appellant's and appellee's jth attorney, respectively. These two variables are coded as 0 if there is no jth attorney, as 1 if the jth attorney has no experience of the TSC appearance prior to this appeal, and as 2–10 according to the number of the jth attorney's TSC appearance.[14] 1[M] is the indicator function that equals 1 if the event M

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13. One anonymous referee suggests that the effect of legal resources could be specified as relational, such as which party has a more experienced legal counsel (see, e.g., McGuire 1998). We therefore also run another set of regressions with a new specification of legal resources by measuring: (a) which party has more experienced legal counsel, and (b) which party has a larger legal team. Overall, the results are consistent with those found in Table 10, which are available upon request. Nevertheless, we think that our specification is better than the relational specification because ours can not only reflect the fact that the TSC's jurisdictional decision is made solely based on the appellant's brief but also can separate the effects of various types of attorneys for both parties.

14. Specifically, XPA_j and XPE_j are coded as 2 if the jth attorney has 1–5 appearances, as 3 if 6–10 appearances, as 4 if 11–15 appearances, as 5 if 16–30 appearances, as 6 if 31–60 appearances, as 7 if 61–90 appearances, as 8 if 91–120 appearances, and as 9 if more than 120 appearances. In our earlier version, we follow the approach adopted by Johnson et al.

holds and zero otherwise. The results are reported in the first column of Table 10.

First note that the marginal effect of whether the appellant retains three or more attorneys on the probability that TSC would reverse is 0.136, and is statistically significant at the 10% level, which suggests that the presence of a legal team of three attorneys or more increases the likelihood of the appellant's success of overcoming the TSC's propensity to affirm. In addition, whereas other variables reflecting the status of the appellant's legal representation are not statistically significant, the experience of the second chair of the appellant's legal team shows positive impacts on the appellant's win rate, statistically significant at the 5% level. This result is consistent with the practice in Taiwan that the second chair within a legal team of three is often the attorney who undertakes the actual work of handling a case. Our following analysis will provide further explanation of why the experience of the second chair matters.

With regard to the effect of a party's "type," the regression confirms the results of our general observation: the stronger a party's type is, the more likely the party will prevail. Specifically, the marginal effect of the score of appellant is positive (0.027) and the marginal effect of the score of appellee is negative (–0.035), indicating that an appellant of higher status is more likely to successfully seek reversal than an appellant of lower status, and it is more difficult for an appellant to win when facing an appellee of higher status than when facing one of lower status. What is more significant is that the phenomenon that a party of higher class wins more remains statistically significant after the quantity and quality of legal representation is, at least partially, controlled for.

We further adopt a two-stage econometric analysis that takes into account the TSC's jurisdictional decision and merits decision. At the first stage, we observe whether an appeal is granted a chance to be heard on the merits (dependent variable = 1) or is procedurally dismissed (dependent variable = 0). Note that insofar as the variables reflecting the quantity and quality of legal representation are concerned, we control for only the appellant's side, because the TSC's decision of whether to hear a case on the merits is made solely based on the appellant's brief. Only after the TSC decides to hear the case on the merits will the appellee's legal team come

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(2006) as well as McAtee and McGuire (2007) to measure an attorney's experience by the logarithm of the number of times, plus one, of TSC appearances during 1996–2008. However, as pointed out by the editor, this approach essentially treats the situation where the litigant did not hire a lawyer and the situation where the lawyer had never appeared before the TSC as the same by taking the logarithm of $N + 1$ in both situations, which might be problematic in our data, in which nearly 20% of the appellants' lawyers and 15% of the appellees' lawyers had 0–5 appearances. In an effort to respond to this potential problem, we adopt the approach of creating the above-mentioned new variable to reflect the experience of a party's counsel. We acknowledge that our categorization of the value of the variable seems arbitrary. Nevertheless, methodologically our new approach is an effective way to respond to the skewed nature of our data. Moreover, note that the econometric results of our previous approach and current approach are essentially identical.

Table 10. Probit Regression of the Methods of Case Disposition (Marginal Effect)

| | Probit model | | Probit model with sample selection | | | |
| | Appellant's win rate (Reversal = 1; Otherwise = 0) | | First stage: Non-dismissal rate (Judgment on the merits = 1; Procedural dismissal = 0) | | Second stage: Reversal rate (Reversal = 1; affirmance = 0) | |
	Marginal effect	Std. err.	Marginal effect	Std. err.	Marginal effect	Std. err.
Score of appellant (SA)	0.027	(0.015)*	0.051	(0.018)***	−0.006	(0.022)
Score of appellee (SE)	−0.035	(0.013)***	−0.028	(0.014)**	−0.025	(0.020)
Type of dispute (TYPE)						
Other contract	0.045	(0.031)	0.034	(0.035)	0.047	(0.045)
Sales	0.067	(0.041)	0.053	(0.044)	0.054	(0.051)
Construction	0.132	(0.043)***	0.064	(0.045)	0.139	(0.045)***
Commercial disputes	0.085	(0.050)*	0.025	(0.052)	0.129	(0.050)***
Real property	−0.029	(0.041)	−0.039	(0.046)	−0.013	(0.065)
Log of time to case disposition (ET)	0.326	(0.021)***	0.502	(0.026)***	–	–
Number of appellant's Attorneys (NA)						
Two	−0.010	(0.039)	0.003	(0.047)	−0.026	(0.059)
Three or more	0.136	(0.082)*	0.180	(0.088)**	0.035	(0.091)
Number of appellee's Attorneys (NE)						
One	0.034	(0.038)	–	–	0.018	(0.054)
Two	0.043	(0.061)	–	–	−0.045	(0.086)
Three or more	0.197	(0.109)*	–	–	0.002	(0.121)
Experience of appellant's Attorneys (XPA)						
The first attorney	−0.004	(0.005)	0.004	(0.006)	−0.013	(0.008)
The second attorney	0.021	(0.010)**	0.024	(0.012)**	0.009	(0.014)
The third attorney	−0.020	(0.019)	−0.028	(0.023)	−0.006	(0.025)
Experience of Appellee's Attorneys (XPE)						
The first attorney	−0.007	(0.007)	–	–	−0.012	(0.010)
The second attorney	−0.006	(0.014)	–	–	0.014	(0.019)
The third attorney	−0.025	(0.024)	–	–	−0.01	(0.033)
Court panel (PNL)						
Panel 2	−0.105	(0.037)***	−0.138	(0.048)***	−0.036	(0.099)
Panel 3	−0.016	(0.042)	0.099	(0.052)*	−0.206	(0.084)**
Panel 4	0.073	(0.045)	0.175	(0.051)***	−0.128	(0.077)*
Panel 5	0.072	(0.045)	0.177	(0.050)***	−0.14	(0.077)*
Panel 6	0.042	(0.043)	0.147	(0.050)***	−0.156	(0.078)**
Panel 7	0.034	(0.042)	0.059	(0.049)	−0.029	(0.070)
Observations	2396		2396			

Note: Standard errors are in parentheses. *, **, and *** represent significance at the 10%, 5%, and 1% nominal levels, respectively. The test for selectivity effect is statistically insignificant with *p*-value = 0.2624. The first column is based on Equation (3), and the second and third columns are based on Equations (4) and (5).

into play. Consequently, at the second stage, we control for both the appellant's and the appellee's strength of legal representation in analyzing whether the appellant successfully obtains reversal judgment (dependent variable = 1) or the judgment in lower court is affirmed by the TSC (dependent variable = 0).

We use a probit model with sample selection for this two-stage analysis, which follows the same specifications as those used in equation (3), and can be expressed as follows:

$$(\text{First stage})Rnd_i^* = \alpha_0 + \alpha_1 SA_i + \alpha_2 SE_i + \sum_j^5 \alpha_{3j}(TYPE_{ij}) + \alpha_4 ET_i$$
$$+ \sum_j^2 \alpha_{5j}(NA_{ij}) + \sum_j^3 \alpha_{6j}(XPA_{ij}) \quad (4)$$
$$+ \sum_j^6 \alpha_{7j}(PNL_{ij}) + u_i, \ Rnd_i = 1[Rnd_i^* > 0],$$

$$(\text{Second stage})Rr_i^* = \beta_0 + \beta_1 SA_i + \beta_2 SE_i + \sum_j^5 \beta_{3j}(TYPE_{ij}) + \sum_j^2 \beta_4(NA_{ij})$$
$$+ \sum_j^3 \beta_{5j}(NE_{ij}) + \sum_j^3 \beta_{6j}(XPA_{ij}) + \sum_j^3 \beta_{7j}(XPE_{ij})$$
$$+ \sum_j^6 \beta_{8j}(PNL_{ij}) + e_i, \ Rr_i = 1[Rr_i^* > 0],$$

$$(5)$$

where Rnd_i is coded as 1 if the ith case is heard on the merits and as 0 if it is procedurally dismissed; and Rr_i is coded as 1 if the appellant wins on the merits and as 0 if the appellee wins. Rnd_i^* and Rr_i^* are the latent variables of Rnd_i and Rr_i, respectively. Our estimates of the first and second stages are reported in the second and third columns of Table 10, respectively.[15]

The results indicate that a party's type as well as its legal representation influences the TSC's decision at the first stage but not its decision at the second stage. Specifically, the regression at the first stage shows that when the appellant is represented by a legal team of three attorneys or more, its appeal is more likely to be heard on the merits. In addition, when the second attorney within the appellant's legal team has more experience before the TSC, the appeal is also more likely to gain the TSC's grant of adjudication on the merits. More significantly, after controlling for the disparity of the appellant's legal representation, the impact of the type of litigant on the TSC's jurisdictional decision is still statistically significant. The positive marginal effect of the appellant's score, with a p-value smaller than 0.01, as well as the negative marginal effect of the appellee's score, with a p-value smaller than 0.05, suggests that an appellant of higher status is more likely to have the appeal adjudicated on the merits, but the appeal is more likely to be procedurally dismissed when the appellant faces an appellee of higher status.

On the other hand, once the TSC decides to grant jurisdiction, the regression shows that none of variables reflecting the party's status as well as legal representation is statistically significant. The result shows that

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15. The test for selectivity effect is statistically insignificant with p-value $= 0.2624$, which indicates that the two stages are statistically independent and can be estimated separately. We also conduct two separate logit regressions for robustness purpose. The results are consistent with the pattern shown in Table 10 and available upon request.

neither the party's type nor the party's legal representation influences the TSC's final decision on the merits.

With regard to the two major control variables—type of dispute and time to case disposition, our econometric model shows that: (1) the type of dispute does not affect the likelihood for a case to be heard on the merits, whereas once entering the merits stage, construction cases, and commercial disputes are more likely to lead to a reversal; (2) as the case becomes more complicated, as measured by the time to case disposition proxy, the likelihood of a case to be heard on the merits also increases, whereas this factor does not affect the likelihood of affirmation or reversal at the second stage.

5. Discussion

Our empirical findings generally support two important theses of the party capability theory. First, a party of higher status is indeed more able to mobilize superior legal representation. Second, the superior legal representation mobilized by a party of higher status enhances the chance of success. However, the party capability theory cannot fully explain the findings in our empirical investigation. Regarding the first thesis, our study shows that the decision of mobilizing legal representation is more strategic than the party capability theory would suggest. The status of a party's legal representation is affected not merely by its own type, but also by its opponent's capability. A stronger opponent and its legal representation would induce a given type of litigant to deploy a stronger legal team.

As to the second thesis, whereas Dotan (1999) suggested that the "haves" do not have advantage in court as long as the "have-nots" are represented by lawyers, our study shows a different result. The fact that the "haves" still come out ahead after their superiority in legal representation has been controlled for suggests that disparity in legal resources alone cannot account for all the net advantages the "haves" enjoy over the "have-nots." There are other factors at work to contribute to the higher win rate associated with the party of higher status.[16]

The results shown in our two-stage analysis strongly suggest that the higher win rate enjoyed by the more privileged party mainly comes from the TSC's jurisdictional decision. When the "haves" are in the position of

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16. Admittedly, we did not control for all sorts of advantages suggested by the party capability theory that the "haves" possess, such as financial abilities and their own experience with the legal system. However, we submit that within the context of appeals to the TSC, independent of the strength of case, it is a party's legal representation, rather than advantages in other aspects, that might potentially affect the party's chance of success. The litigation before the TSC, which theoretically deals solely with legal issues, demands legal expertise instead of superior resources in other aspects. This argument is further supported by the fact that oral-argument hearings are almost never held for cases in the TSC. Moreover, superior resources a party possesses are usually converted into a better legal team with more experience in appellate litigation.

appellant, their appeals are more often granted review on the merits. On the other hand, and more significantly, when the "haves" are appealed against as appellee, their opponents are more likely to be denied access to substantive adjudication by the TSC through procedural dismissals.

This phenomenon leads us to a closer examination of our empirical results. Specifically, to explore how the TSC treats different types of litigants in exercising its discretion, we measure the net advantage of different types of litigants in having their cases heard on the merits by using the same strategy as computing the net advantage in the overall win rate. The results, as reported in Table 11, show that, in terms of the non-dismissal rate, whereas the general trend indicates that stronger parties enjoy greater net advantage, the real advantage lies in the governmental litigants, especially the central government, which enjoys a net non-dismissal advantage of 27.79%. On the other hand, the difference of the net non-dismissal advantage between the individual (–1.41%) and the business (0.30%) is less than 2%. These results suggest that governmental litigants in general, and the central government in particular, are different and should be examined separately.

We adopt three sets of logistic regressions to verify our descriptive statistics. In the first set of regression, we test not only whether the central government has a better chance of having their cases heard on the merits as appellant, but also whether an appeal against the central government is more likely to be dismissed procedurally. The result shows that this is indeed the case.[17] The second set of regression follows the same structure as the first regression but treats both the central government and the local governments as the same group. The results indicate that a certain "government effect" persists but is weaker than the "central government effect" as shown in the first regression.[18] The third regression, under which the cases involving governmental litigants are excluded, indicates that there is

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17. To investigate the net non-dismissal advantage of the central government, we further restrict our attention to the appeals where appellants and appellees are of different types, and categorize appellants/appellees into two types: the central government or not-the-central-government. We then regress whether an appeal is granted a chance to be heard on the merits (dependent variable = 1) or procedurally dismissed (dependent variable = 0) on whether the appellant is the central government (=1; otherwise =0), whether the appellee is the central government (=1; otherwise =0), and other covariates. The marginal effect of the central government as appellant on the probability of non-dismissal is significantly positive (0.130) at the 10% nominal level, which implies that an appeal is more likely to be heard on the merits when the appellant is the central government. In contrast, the marginal effect of the central government as appellee is significantly negative (–0.107) at the 5% level, which indicates that an appeal is more likely to be procedurally dismissed when the appellee is the central government. The detailed results are reported in the first column of Table A3 in the Appendix.

18. In the second set of regression, the appellants and appellees are classified into two types: government or not-government. The marginal effect of government as appellant on the probability of non-dismissal is 0.100 and significant at the 10% level, and the marginal effect of government as appellee is negative (–0.060), which is not statistically significant. The detailed results are reported in the second column of Table A3 in the Appendix.

Table 11. Net Non-dismissal Advantage of Different Types of Litigant

Type of litigant	Non-dismissal rate as appellant (%)		-	As appellee, opponents' Non-dismissal rate (%)		=	Net advantage (%)
Individual	32.88	(1244)	-	34.29	(1041)	=	−1.41
Business	44.21	(1036)	-	43.91	(1075)	=	0.30
Local gov.	47.69	(65)	-	40.00	(135)	=	7.69
Central gov.	58.82	(51)	-	31.03	(145)	=	27.79

Note: The number of observations is listed in parentheses.

essentially no difference between individuals and businesses in the TSC's decision to exercise discretionary jurisdiction.[19]

The above exploration reveals that what truly dominates the TSC's jurisdictional decision is the governmental status rather than the party capability. The uniqueness of government as litigant has long attracted academic attention, with abundant literature focusing on the US federal courts (see, e.g., Eisenberg and Farber 2003). In reviewing empirical studies testing the party capability theory, Kritzer (2003: 343) pointed out that "the dominant pattern is not advantageous to 'haves' but advantageous to government." He argued that government is different, and these differences, rather than simply party capability, account for government's advantage. Our study is not merely in line with Kritzer's observation but also goes further to highlight his explanations of *why* government comes out ahead.

In the United States, it has been widely recognized that the federal government fares exceptionally well at the certiorari stage before the Supreme Court. The generally supported explanation for this phenomenon is that the Office of Solicitor General representing the federal government is of high quality and is very selective in the appeal decision (O'Connor 1983: 257; Salokar 1992). This line of explanation is not only consistent with what the economic theory of litigation predicts (see, e.g., Posner 1992: 602–04) but also supported by empirical evidence (Cohen and Spitzer 2000). On the other hand, McGuire (1998) showed that, at the merits stage, the federal government's advantage is derived from the solicitor general's richer experience before the Supreme Court, and such advantage disappears after the solicitor general's superior experience is taken into account.

Although the quality of legal representation and case selection effect may also contribute to the result in our study that the central government

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19. In this regression, we focus on the appeals in which only individuals and businesses are involved and appellants and appellees are of different types (i.e., individual appellants vs. business appellees and business appellants vs. individual appellees). The marginal effect of the individual as appellant, which equals –0.043, is insignificantly different from zero. The detailed results are listed in the third column of Table A3 in the Appendix.

enjoys advantage in the TSC's jurisdictional decision, we believe that the central government's huge net "non-dismissal" advantage in our data cannot be fully explained by these two factors. We argue that the TSC treats the central government more favorably. First note that the central government in Taiwan does not establish an office equivalent to the US Solicitor General to handle and supervise its litigation matters.[20] When various agencies of the central government encounter civil disputes, it is up to the respective agency to retain private lawyers. The appeal decision is also made by the respective agency without any centralized supervision. Although our data show that the legal representation hired by the central government is the strongest among all types of litigants and that the appellant's legal team significantly affects the chance of being heard on the merits, the central government still enjoys advantage at the jurisdictional stage even after the superiority of its legal team is taken into consideration.

Admittedly, the specifications we use to control for the disparity of legal representation cannot fully account for the selectivity the central government may possess. The small number of cases where the central government appears as appellant in our data also seems to imply that the central government is indeed highly selective in its appeal decision.[21] However, this selectivity explanation is contradicted by the fact that the central government has the *lowest* success rate (60.0%) at the merits stage, where the individual appellants and business appellants enjoy a success rate of 68.2% and 72.9%, respectively. If the central government were truly selective in its appeal decision and the TSC had adopted a consistent standard in choosing the cases to be heard on the merits, the central government should have been at least as successful as, if not more successful than, other types of appellants at the merits stage. Nevertheless, our data indicate exactly the opposite.[22]

Recall that the case of the central government as appellant against an individual as appellee constitutes the only exception to what the party capability theory would predict under the index of status differential as

20. The Department of Justice in Taiwan handles and supervises only criminal prosecutions, which are outside the scope of our empirical investigation. Although some legal scholars have advocated establishment of an office equivalent to the US Solicitor General, such advocates have not received enough attention to lead to even a proposal.

21. However, we caution that one should not read too much into the small number of appeals involving the government, since disputes between a private party and the government are more likely to fall within the jurisdiction of the Administrative Courts. We acknowledge that a more direct test would be to observe the central government's performance and frequency of appearance in the court of second instance hearing pure civil disputes. Regrettably, due to research resource constraints, we are unable to invest in collecting data of such a huge scale at this time.

22. Using data on the careers and opinions of 321 judges from Japan, Ramseyer and Rasmusen (2001) argued that the main reason why Japanese prosecutors have an extremely high conviction rate is that they face budget constraints, and therefore present the judges with only the most obvious cases. In other words, the success rate only reflects case selection by prosecutors.

reported in Table 9. Breaking the central government's overall success rate (8.3%) into the jurisdictional stage and the merits stage reveals that the central government has the highest non-dismissal rate (50.0%) of all kinds of match-ups but has the lowest reversal rate (16.7%) at the merits stage. This further demonstrates why the significantly higher non-dismissal rate enjoyed by the central government cannot be fully explained by the selectivity hypothesis. Nor can the selectivity hypothesis explain why, when the central government is appealed against, its opponents' chance of having their cases be heard on the merits significantly decreases. Since the TSC relies mainly on the appellant's appeal brief and the supporting documents to make the decision of whether to hear the appeal on the merits, its decision should not have been affected by whether the appellee is the central government. This phenomenon reinforces our argument that the central government's advantage in the TSC's jurisdictional decision cannot be fully explained by either the disparity of legal representation or the potential selectivity of the government's decision to appeal.

Rather, our study provides additional evidence for the "regime effect" theory (Kritzer 2003), which argued that whereas norms of judicial independence are supposed to insulate judges from other branches of government, because courts are highly dependent on other governmental agencies to enforce their decisions, judges are hesitant about "slapping down" agencies in the other branches, especially for generalist courts. Our study suggests that this regime effect persists even for a court, such as the TSC, dealing with purely civil disputes without the function of reviewing administrative decisions. Moreover, we argue that this "regime loyalty" may be rooted deeper than the courts' reliance on the executive branch to enforce their decisions. The TSC's preference to the central government and bias against its opponent may originate from the civilian judges' self-identification as part of the central governmental regime.

As explained above, the TSC judges are professional judges who are elevated to the top of the judiciary pyramid after tens of years' experience in the lower courts. This "hierarchical officialdom," a term used by Damaska (1986) to portray the feature of the judiciary in the civil-law system and to contrast with the "coordinate officialdom" in the common-law system, significantly increases the degree of bureaucratization of the judiciary. Moreover, another important feature of the judiciary in Taiwan is that there used to be no independent body of law to regulate the "professional judges," who were characterized as "public servants" and were regulated by the same set of rules used to regulate the whole body of public servants in the executive branch. The combination of all the above factors has the effect of inducing the professional judges to identify themselves as part of the central government, which in turn fosters the "regime effect."

It is particularly informative that the TSC's preference for government as well as bias against its opponent exists only at the jurisdictional stage but not at the merits stage. This phenomenon is consistent with the theoretical prediction that the "haves" might come out ahead not so much

because the judges are biased toward them *per se* but rather because the judges are biased toward hearing their cases on the merits (Heydebrand 1979). The TSC's exercise of discretionary jurisdiction provides further insights. It is subject to virtually no scrutiny. In procedurally dismissing an appeal, the TSC only issues a boilerplate ruling without substantial explanation. This practice shields the TSC's jurisdictional decision from public scrutiny. The freedom from review, along with no need to provide explanations, of its jurisdictional decision thus creates margin for the regime effect to exist. On the other hand, as long as the TSC decides to review an appeal on the merits, it is bound to issue a formal judgment with clear explanations of why the TSC decides to reverse or to affirm. With respect to a decision on the merits, it is certainly more difficult to find room for any preference or bias the TSC might possess.

Put in the context of the court preference thesis, our results support its basic premise that the court indeed exhibits preference toward a particular type of litigant, and such preference has significant influence on case outcomes. Our study cautions that it might not be universally accurate to attribute governmental litigants' high level of success entirely to their ability to mobilize stronger legal representation and/or their selectivity in appeal decision. Regarding the advantage of the "haves" in the Canadian Supreme Court, McCormick (1993) argued that it is simply an illustration of party capability theory and that there is nothing wrong with this phenomenon, any more than the result that the taller team in a basketball game grabs more rebounds. Our study teaches a different lesson. Although it might be arguable whether a court should actively "level the playing field" to help the underdogs just as the Supreme Court in the Philippines has done (Haynie 1995), the phenomenon that the court at the top of the judicial system especially favors the central government is certainly disturbing and demands our attention.

6. Conclusion

In this article we use data newly collected on appeals to the TSC to test the party capability theory as well as the court preference thesis. The richness of the data enables us to go deeper into the questions of (1) whether the "haves" truly have stronger legal representation as assumed in the past literature; (2) whether the "haves" still come out ahead after any superior resource they enjoy is controlled for; and (3) whether the preference of the court plays a role in influencing case outcomes. We find positive answers to all three questions. Our study shows that the party capability theory cannot fully explain the advantages the "haves" enjoy over the "have-nots." The role judges play in the litigation process matters, especially in the context of exercising discretionary jurisdiction. Although prior studies found that the court shows preference toward the "have-nots" in an effort to level the playing field, our study indicates an entirely opposite attitude—the TSC strongly favors government in its jurisdictional

decision. We submit that neither the government's greater capability in mobilizing a stronger legal team nor its selectivity in appeal decision can fully explain the government's advantage. We argue that a plausible explanation lies in the "regime effect," which is induced by the professional judges' self-identification as part of government in Taiwan.

The obvious lesson from our study is that although the "haves" indeed mobilize stronger legal teams and generally obtain more success in court, it is still too simplistic to conclude that the "haves" come out ahead because of the party capability theory. The court's attitude in the legal process also plays an important role, especially when such attitude is hidden behind the court's discretion and the exercise of such discretion requires no explanation. Our study thus informs the policy makers of the need to more closely monitor how a court exercises its discretionary power.

Appendix

Table A1. Zero-truncated Negative Binomial Regression of the Number of Appellant's Attorneys

	Number of appellant's attorneys	
	Marginal effect	Std. err.
Type of appellant (A)		
Business	0.095	(0.040)**
Local gov.	−0.110	(0.095)
Central gov.	0.004	(0.124)
Type of appellee (E)		
Business	0.129	(0.043)***
Local gov.	0.121	(0.095)
Central gov.	0.210	(0.101)**
Type of dispute (TYPE)		
Other contract	0.027	(0.057)
Sales	−0.081	(0.064)
Construction	−0.022	(0.067)
Commercial disputes	0.041	(0.087)
Real property	−0.030	(0.072)
Observations	2396	
Pseudo R^2	0.0087	

Note: Standard errors are in parentheses. *, **, and *** represent significance at the 10%, 5%, and 1% nominal levels, respectively. The result is based on the following specification:

$$N_i = \beta_0 + \sum_j^3 \beta_{1j} A_{ij} + \sum_j^3 \beta_{2j} E_{ij} + \sum_j^5 \beta_{3j}(TYPE_{ij}) + \varepsilon_i,$$

where the subscript i indicates the observation for the ith case; N_i is the number of appellant's attorneys; A_i and E_i denote the sets of binary dummies for the types of appellant and appellee, respectively; $TYPE_i$ is a set of binary variables for the types of dispute. All binary dummies above are 1 if a given condition is matched, and 0 otherwise.

Table A2. Zero-inflated Negative Binomial Regression of the Number of Appellee's Attorneys

	Number of appellee's attorneys	
	Marginal effect	Std. err.
Type of appellant (*A*)		
Business	0.154	(0.040)***
Local gov.	0.250	(0.137)*
Central gov.	0.761	(0.191)***
Type of appellee (*E*)		
Business	0.209	(0.042)***
Local gov.	0.446	(0.113)***
Central gov.	0.422	(0.107)***
Type of dispute(*TYPE*)		
Other contract	0.144	(0.062)**
Sales	0.045	(0.079)
Construction	0.039	(0.074)
Commercial disputes	0.151	(0.101)
Real property	−0.009	(0.081)
Number of appellant's attorneys (*NA*)	0.099	(0.024)***
Observations	2396	
Pseudo R^2	0.025	

Note: Standard errors are in parentheses. *, **, and *** represent significance at the 10%, 5%, and 1% nominal levels, respectively. The result is based on the following specification:

$$N_i = \beta_0 + \sum_j^3 \beta_{1j} A_{ij} + \sum_j^3 \beta_{2j} E_{ij} + \sum_j^5 \beta_{3j} \left(TYPE_{ij} \right) + \beta_4 NA_i + \varepsilon_i,$$

where the subscript *i* indicates the observation for the *i*th case; N_i is the number of appellant's attorneys; A_i and E_i denote the sets of binary dummies for the types of appellant and appellee, respectively; $TYPE_i$ is a set of binary variables for the type of dispute; NA_i is the number of the appellant's lawyers. All binary dummies above are 1 if a given condition is matched, and 0 otherwise.

Table A3. Logistic Regression of Whether an Appeal Was Heard on the Merits or Procedurally Dismissed (Marginal Effect)

Base group	Dep. Var. = nondismissal (1 = nondismissal 0 = dismissal)					
	Central government		Governments		Individual vs business	
	Cases with no central government involved		Cases with no government involved		Cases with individual appellee and business appellant	
	marginal effect	std. err.	marginal effect	std. err.	marginal effect	std. err.
Appellant is central gov. ($A = CG$)	0.130	(0.077)*	–	–	–	–
Appellee is central gov. ($E = CG$)	–0.107	(0.043)**	–	–	–	–
Appellant is government ($A = G$)	–	–	0.100	(0.055)*	–	–
Appellee is government ($E = G$)	–	–	–0.060	(0.038)	–	–
Appellant is individual ($A = I$)	–	–	–	–	–0.043	(0.038)
Type of dispute (*TYPE*)						
Other contract	–0.010	(0.046)	–0.006	(0.047)	–0.005	(0.061)
Sales	0.029	(0.073)	0.029	(0.073)	0.057	(0.091)
Construction	0.090	(0.056)	0.093	(0.056)*	0.120	(0.099)
Commercial disputes	–0.020	(0.067)	–0.014	(0.069)	0.009	(0.078)
Real property	–0.064	(0.061)	–0.062	(0.062)	–0.006	(0.086)
Number of appellant's Attorneys (*NA*)						
Two	–0.034	(0.065)	–0.037	(0.065)	–0.082	(0.082)
Three or more	0.024	(0.113)	0.028	(0.114)	0.047	(0.143)
Experience of appellant's Attorneys (*XPA*)						
The first attorney	0.020	(0.008)**	0.019	(0.008)**	0.012	(0.010)
The second attorney	0.040	(0.017)**	0.040	(0.017)**	0.056	(0.023)**
The third attorney	–0.009	(0.030)	–0.010	(0.030)	–0.027	(0.036)
Observations	1110		1110		716	
Pseudo *R*-squared	0.031		0.030		0.024	

Note: Cases with the same type of appellant and appellee are not included in this analysis. In Column 3, we further exclude the cases in which governments are involved. Our results are based on the following logistic regression:

$$Rnd_i^* = \alpha_0 + \alpha_1 A_i + \alpha_2 E_i + \sum_j^5 \alpha_{3j}(TYPE_{ij}) + \sum_j^2 \alpha_{4j}(NA_{ij}) + \sum_j^3 \alpha_{5j}(XPA_{ij}) + \varepsilon_i, \ Rnd_i = 1[Rnd_i^* > 0],$$

where the subscript i indicates the observation for the ith case; the dependent variable Rnd_i is coded as 1 if the case is not dismissed procedurally and is coded as 0 if otherwise; Rnd_i^* is the latent variable of Rnd_i; A_i and E_i denote the sets of binary dummies for the type of appellant and appellee, respectively; $TYPE_i$ is a set of binary variables for type of dispute; NA_{i1} (NA_{i2}) is coded as 1 if the appellant has two (three or more) lawyers and as 0 if otherwise; and XPA_{ij} represents the experience of the appellant's jth attorney, as defined in Equation (3). $1[M]$ is the indicator function that equals 1 if the event M holds and zero otherwise. *, **, and *** represent significance at the 10%, 5%, and 1% nominal levels, respectively.

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