Typology of Career Paths of STF Justices

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In this research note, we present the complete typology of the STF justices' career paths for the post-1988 period, part of which is used in the article[1]. Our purpose in publishing the entire typology, covering all justices and the entire period, is to not only allow the above-mentioned study to be replicated but also enable new tests of hypotheses and new analyzes based on elements of the STF justices' professional trajectories.

According to the Constitution, STF justices must be citizens over 35 and under 65 years of age, with remarkable legal knowledge and an unblemished reputation. Recruitment, therefore, is not linked to specific careers, which allows the President of the Republic to appoint and nominate (after confirmation by the Senate) candidates with different professional profiles, from "pure" judges to politicians who are Bachelors of Law. In fact, successive compositions of the STF have accommodated a diversity of career paths. This typology seeks to organize and operationalize these career paths in the form of independent variables that can be used to analyze the court.

The typology operates in two steps. First, with a more descriptive goal, five types of career paths are defined on a spectrum ranging from the "pure" judge to the politician who has held an elected position. Between these two points, professions and occupations range according to the following core – but not exclusive – aspects: means of professional access and rise, whether more independent or dependent on politics; previous positions, which provided more or less professional stability; and

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previous professional roles (which bring actors closer to certain types of interests and develop their inclinations). Thus, by distinguishing professions, we can identify relevant aspects of the career paths that will be accommodated in the court. To capture these aspects in more detail and operationalize them as independent variables, the typology includes a second step based on the idea that these different types comprise three central elements that should be identified in justices' career paths: i) various professional expertise, ii) stability and state of (in)dependence, and iii) types of interests they became used to defending or representing.

First step. Five types of career paths

Legal type I refers to holding a judgeship as the main professional activity. Due to its characteristics, this is one of the extreme points in the typology – it involves the stability associated with a tenured position under civil service protection, it includes technical-legal activities, and it concerns adjudicating disputes between the interested parties. Although type 1 is the profile most insulated from politics, it is not completely immune to it. That is because judgeship is not always assumed through civil service entrance examination, in other words, not always through public competition. Until 1977, several justices in the STF had previously been lower court judges (*juízes federais de primeiro grau*) who had been directly appointed by the President of the Republic, that is, they had assumed a judgeship through political nomination. Many others had become appellate judges (*desembargadores*) in state or federal courts through the *"quinto constitucional"*[2] provision after working as attorneys or being members of the Public Prosecution (*Ministério Público*). These different means of access to judicial positions have important implications and thus must be incorporated into the second step of our typology.

Legal type II concerns legal careers (other than the judicial career) in which candidates are recruited through public competition, not through political appointment: those in Public Prosecution Offices (*Ministérios Públicos*), State Attorney's Offices (*Procuradorias de Estado*), and the Office of the Solicitor General

[2]According to this constitutional mechanism, 20% of the seats in Brazilian courts are reserved for attorneys and members of the Public Prosecution, alternately, who are nominated by the head of the executive branch.

(*Advocacia Geral da União*). In the typology spectrum, type II represents professional careers that provide stability not only because these are tenured positions under civil service protection, but also because such stability is exclusively based on passing the entrance examination. On the other hand, these careers imply defending sometimes public, sometimes governmental interests, or, why not say, partisan interests. In general, they act as attorneys, not as judges, and they may perform prosecution or defense activities. We consider that justices with a background in the Public Prosecution have developed the experience of not only prosecuting but also defending public interests, while those with a background in state attorneys' offices and in the Solicitor General's Office are skilled in defending the executive branch and, consequently, are sensitive to the partisan interests of the head of the executive.

Legal type III covers private law, teaching (when it is the main professional activity), and entry-level assistant jobs in law firms. Type III stands out more for the experience with market relations than for job stability, and it also involves defending private interests. Justices very often have worked as attorneys and professors, but type III will allow us to identify when these occupations really structured their career paths as opposed to when they were merely secondary, entry-level activities. However, among the justices who became university professors through public competition, we did not find one who has dedicated to teaching exclusively – all combined this activity with some other, generally more relevant, occupation. Therefore, we assume that public competition for university positions does not offer justices the same stability they get when they pass an entrance examination for a legal career in the state. Type III identifies professional rise structured by the logic of private market relations but also by corporate and partisan organizations to which future justices are linked. Although many justices have worked as attorneys for a significant period, and therefore one might consider it as a structuring activity in their career paths, very few of them were working as attorneys when they were appointed to the STF. Finally, we assume that, although in their work attorneys may also take the role of accusers, they are most likely to develop expertise in defending. Similar reasoning was applied for state attorneys and solicitors general while the opposite was assumed for members of the Public Prosecution and their expertise in prosecuting.

Type IV, "Reliable Politician" (*"Político de Confiança"*), includes holding positions within the state bureaucracy – by and large related to legal activities – assumed through political appointment, not through public competition, in the executive branch – for example, in secretariats and ministries at state and federal levels. Although such positions almost always involve legal and/or public security services, they contrast with traditional legal careers not only because of how professionals access these positions but also because they entail political dependence and lack of stability. Thus, type IV highlights the importance of the personal and political ties that marked the rise of these future justices; it also stresses the fact that these professionals have experience in defending partisan interests or the interests of those in the executive branch to which they are subordinated. Type IV also includes two special cases: those nominated by the President of the Republic as Solicitor General and as Attorney General (the latter, only until 1988) despite them not being in the profession – they are considered political nominees and are therefore classified into this category.

Type V is on the opposite end of the spectrum in our typology, reserved for "pure politicians". If on one end are "pure judges", here are those who are Bachelors of Law and have occupied elected positions/political representation positions. Type V highlights professionals with politicized profiles and an explicitly partisan nature, who ascended through electoral politics and do not have the stability of legal careers but are protected by their fixed terms of office. They have experience in defending partisan interests, but their knowledge from participating in public life is shaped by the legislative and executive perspectives. Although the Constitution allows for people with such political-electoral profile to be recruited as justices, there were few cases of type V; also, those who fit this profile combine this experience with positions and activities listed in type III and, mostly, in type IV.

Second step. Specifying elements in the career paths: expertise, professional rise, and interests

The second step in our typology seeks to refine and select aspects of the career paths that we consider essential for the professional and political training of future justices and could influence their judicial behavior in the court: 1. The type of legal expertise, if focused on prosecuting, defending, or judging; 2. The means of access and rise in various careers, whether it involves the stability of legal positions

assumed through public competition, appointed positions known as *cargos de confiança* (when the appointee may keep its position only as long as the appointing authority wishes) and other forms of political appointments, or private law (market) and teaching; 3. The types of interests with which justices were involved for the longest time, those they were used to defending or arbitrating. These three highlighted aspects in our typology can shed some light on the following elements: 1) the most long-lasting the most long-lasting role played by each justice when processing cases in their careers before entering the court (defending, prosecuting, or judging), 2) the condition of either independence – associated with the stability of a tenured position assumed through public competition – or political dependence – derived from having ascended professionally owing to the will of others, and 3) the type of interest justices defended for the longest period, whether they represented private/partisan or public interests or adjudicated cases/disputes between the interested parties.

As our typology further describes these three elements as mechanisms that likely shape justices' votes in the court, it is assumed that 1) the STF nominees bring to the court the expertise in prosecuting, defending, or judging they developed before joining the court. Through these activities, future justices learn specific procedural techniques, law interpretations, and probably different worldviews. We expect that the various inclinations among justices would influence how they vote and justify their votes since the types of legal actions in the STF allow for these various inclinations not only to be expressed but also to organize the judicial decision-making in the court. Thus, *ceteris paribus*, as an example, it is likely that justices with a background in the Public Prosecution will stand out for how they mobilize prosecutorial elements, while those who worked as attorneys will be more sensitive to defense arguments. 2) Our typology also considers that although security of tenure until mandatory retirement can neutralize the effect of previous ties and reshape the behavior of a new justice, it will not completely neutralize the effect of having career paths dependent on political appointments or based exclusively on civil service positions assumed through public competition. Even if there are no political debts to pay off, such experiences result in different combinations of the Weberian ethics of conviction and responsibility among justices. Thus, *ceteris paribus*, as an example, it is likely that justices who have held

cargos de confiança or ascended through other types of appointments (of a political or even corporatist nature) would have become more sensitive to the consequences of their decisions than those with more insulated careers. As an extension of type 2, our empirical model specifies the experience of holding a judgeship in superior courts and living in Brasilia while holding high-level federal positions. In the case of the superior courts (*Superior Tribunal de Justiça*, STJ; *Tribunal Superior do Trabalho*, TST; and, in part, the *Tribunal Superior Eleitoral*, TSE), given how judges are recruited, we consider that holding a position in these courts represents a mix of judicial work and political appointment. As for holding high-level federal positions in Brasília, we consider that such means of professional rise depends on being seen as reliable by the federal executive. To ensure we only capture this effect, this variable does not include simply living in the federal capital or holding positions in courts of second instance (such as the *Tribunal Regional Federal da 1ª Região* - TRF1). Finally, 3) tenure in the STF does not erase the types of interests defended by new justices throughout their careers. We distinguish three types of interests: private or partisan interests, public interests, and adjudication of cases/disputes between the interested parties. Thus, *ceteris paribus*, as an example, we consider that attorneys – but also state attorneys and solicitors general – are fashioned to pursue the interest of the *party* they represent (whether private or partisan), while public prosecutors are encouraged to pursue public interests, and judges are inclined toward adjudicating cases/disputes between the interested parties in specific cases. Given the variety of cases that reaches the STF, exploring the interest dimension seems essential, if not in substantive terms, at least in procedural terms; we postulate that previous professional experiences have somehow shaped justices' profiles, which allows them to identify and defend interests based on their own preferences.

Additional specifications and expected contributions from the typology

In short, this typology seeks to go beyond the formal aspects commonly observed in dichotomous classifications of career paths in order to identify more substantive elements that could lead to new hypotheses about the judicial behavior in the STF and that could be used as empirically observable and easily replicable independent variables. Another important contribution is that, by doing so, we

create an *ex ante* classification of profiles of justices to try to explain those justices' votes instead of building these profiles based on the codification of their votes. Thus, if justices' visions of the world and the law are to some extent shaped by the time they dedicated to certain professions and activities before joining the court, it is important to specify which factors, within these professions, can produce this long-term effect.

The typology is based on the general hypothesis that variations in expertise, means of entering and ascending in a career, and type of interest with which future justices used to work affect the act of judging, as described above.

To further specify how the typology is used empirically, counting career paths in years is essential for creating hybrid profiles. By incorporating the number of years into the analytical models, we can see how the different professional experiences of each justice shape his or her decision-making pattern. On the other hand, although justices pursue more than one professional activity simultaneously throughout their careers, the basic unit "year-profession" should receive only one code, the one representing the strongest occupational link of a given future justice at a given time. Multiple codifications for the same year would likely blur the profiles and put an end to building a typology capable of pointing out the distinctions that matter. Also, "strongest occupational link" refers to the professional link that gives justices the greatest stability in their professional life – one of the most important aspects in our typology – and not necessarily to the payment, reputation, or popularity involved. We should stress that our typology is built for analyzing the STF justices´ decision-making, not for assessing how they became notorious and ascended to the STF.

When we first applied this typology, we only considered the types of professional activities in which future justices had spent a minimum of 30% of career path time, in years, in the same type of professional activity to then carry out the second step in our coding process and operationalize the respective independent variables in our analytical model. All independent variables – expertise, professional rise, and interests – were affected by this decision, that is, they were coded with "yes" or "no" according to the activities that occupied at least 30% of the justices' career paths before entering the court. Other research strategies may abandon or change the 30% threshold since it is arbitrary.

Biographical sources and information on career paths

For this first application of the typology, focused on post-1988 justices, our main source of information was the "justices' folders" available at the STF website (http://portal.stf.jus.br/), mainly the tab "curriculum and biography", where one can find the presidential appointment official message accompanied by a résumé made especially for the occasion. Also, additional questions were answered through secondary sources, particularly Laurenio Lago's book, *Supremo Tribunal de Justiça e Supremo Tribunal Federal: dados biográficos 1828-2001*. (3rd ed. Brasília: Supremo Tribunal Federal, 2001), entries in the *Dicionário Histórico-Biográfico Brasileiro* issued by the CPDOC-FGV (available at http://www.fgv.br/cpdoc/acervo/arquivo), and interviews from the "História Oral do Supremo - 1988-2013" project (available at https://historiaoraldosupremo.fgv.br/entrevistas). To codify justices before 1988, these and other sources of information will be needed since the "folders of justices" on the STF website lack information as one goes back in time.

Career path datasets (1988-2021)

The typology was first applied to justices in the 1988-2021 period, starting with Moreira Alves and ending with André Mendonça. The datasets with the classifications and first operationalizations of the typology in the analysis of the justices' behavior can be found at Harvard Dataverse[3].

First tests – Results of the regression models – Justices and decisions on the Mensalão trial

[3]Available at: https://doi.org/10.7910/DVN/N69VJP

Table 01. Results of the logistic regression models referring to graph 3 and to the complete model with all variables – In odds ratio.

	Dependent Variable:				
	Vote (conviction)				
	(1)	(2)	(3)	(4)	(5)
Appointment	0.189***				0.444
	(0.038)				(0.263)
Market/teaching	10.112***				8.191***
	(3.228)				(5.031)
Private interests		0.174***			
		(0.049)			
Adjudication between parties		0.262***			
		(0.069)			
Public interests		1.030			
		(0.453)			
Defending			0.174***		0.422
			(0.049)		(0.386)
Judging			0.262***		0.626
			(0.069)		(0.370)
Prosecuting			1.030		2.790
			(0.453)		(2.325)
Brasília				0.327***	0.981
				(0.080)	(0.490)
Superior Court				3.602***	1.134
				(0.987)	(0.921)
Passive Corruption	6.820***	6.570***	6.570***	6.003***	7.002***
	(2.780)	(2.661)	(2.661)	(2.378)	(2.871)
Criminal Conspiracy	0.287***	0.291***	0.291***	0.316***	0.271***
	(0.089)	(0.090)	(0.090)	(0.095)	(0.086)
Active corruption	2.036**	1.997**	1.997**	1.919**	2.065**
	(0.607)	(0.587)	(0.587)	(0.548)	(0.621)
Foreign Currency Drain	3.115**	3.145**	3.145**	2.907**	3.312**
	(1.729)	(1.764)	(1.764)	(1.574)	(1.889)
Embezzlement	0.916	0.915	0.915	0.914	0.921
	(0.399)	(0.394)	(0.394)	(0.384)	(0.404)
Management Fraud	0.664	0.671	0.671	0.687	0.659
	(0.307)	(0.307)	(0.307)	(0.304)	(0.308)
item_8	0.083***	0.085***	0.085***	0.100***	0.075***
	(0.048)	(0.049)	(0.049)	(0.056)	(0.044)
item_7	0.063***	0.064***	0.064***	0.077***	0.056***
	(0.026)	(0.026)	(0.026)	(0.031)	(0.024)
item_6	0.502**	0.512**	0.512**	0.532**	0.495**
	(0.164)	(0.165)	(0.165)	(0.167)	(0.164)
item_2	0.751	0.766	0.766	0.774	0.756
	(0.336)	(0.341)	(0.341)	(0.333)	(0.345)

item_3	0.936	0.953	0.953	0.980	0.946
	(0.419)	(0.421)	(0.421)	(0.422)	(0.429)
PT	0.563**	1.938	1.938	0.139***	1.917**
	(0.164)	(0.800)	(0.800)	(0.048)	(0.535)
PSDB	4.620***	5.153***	5.153***	0.874	12.956***
	(1.948)	(2.604)	(2.604)	(0.321)	(5.792)
PRN	0.259***	1.026	1.026	0.074***	
	(0.090)	(0.507)	(0.507)	(0.033)	
Constant	10.209***	9.693***	9.693***	28.254***	3.887
	(3.806)	(5.583)	(5.583)	(12.547)	(4.068)
Observations	1080	1080	1080	1080	1080
Log Likelihood	-534.078	-539.194	-539.194	-568.432	-519.169
AIC	1102.155	1114.388	1114.388	1170.863	1080.337
BIC	1186.895	1204.113	1204.113	1255.604	1185.016

Note: *p<0.1; **p<0.05; ***p<0.01

Table 02. Results of the logistic regression models referring to graph 4 – In odds ratio.

	Dependent Variable:							
	Vote (conviction)							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Appointment	0.285***		0.285***		0.255***		0.255***	
	(0.056)		(0.056)		(0.053)		(0.053)	
Market/teaching	10.191***	10.191***	10.191***	10.191***	12.787***	12.787***	12.787***	12.787***
	(3.260)	(3.260)	(3.260)	(3.260)	(4.347)	(4.347)	(4.347)	(4.347)
Prosecuting	3.666***			3.666***	4.961***	4.961***		
	(0.859)			(0.859)	(1.265)	(1.265)		
Public Competition		3.504***		3.504***		3.925***		3.925***
		(0.687)		(0.687)		(0.809)		(0.809)
Public interests		3.666***	3.666***				4.961***	4.961***
		(0.859)	(0.859)				(1.265)	(1.265)
Brasília					1.494**	1.494**	1.494**	1.494**
					(0.298)	(0.298)	(0.298)	(0.298)
Criminal Conspiracy	0.250***	0.250***	0.250***	0.250***	0.244***	0.244***	0.244***	0.244***
	(0.050)	(0.050)	(0.050)	(0.050)	(0.049)	(0.049)	(0.049)	(0.049)
Active corruption	2.073***	2.073***	2.073***	2.073***	2.095***	2.095***	2.095***	2.095***
	(0.532)	(0.532)	(0.532)	(0.532)	(0.541)	(0.541)	(0.541)	(0.541)
Foreign Currency Drain					3.296**	3.296**	3.296**	3.296**
					(1.873)	(1.873)	(1.873)	(1.873)
Passive Corruption	6.781***	6.781***	6.781***	6.781***	6.924***	6.924***	6.924***	6.924***
	(2.654)	(2.654)	(2.654)	(2.654)	(2.722)	(2.722)	(2.722)	(2.722)
item_6	0.583***	0.583***	0.583***	0.583***	0.576***	0.576***	0.576***	0.576***
	(0.105)	(0.105)	(0.105)	(0.105)	(0.105)	(0.105)	(0.105)	(0.105)
item_7	0.067***	0.067***	0.067***	0.067***	0.064***	0.064***	0.064***	0.064***
	(0.024)	(0.024)	(0.024)	(0.024)	(0.023)	(0.023)	(0.023)	(0.023)
item_8	0.239***	0.239***	0.239***	0.239***	0.086***	0.086***	0.086***	0.086***
	(0.059)	(0.059)	(0.059)	(0.059)	(0.047)	(0.047)	(0.047)	(0.047)
PT					2.131***	2.131***	2.131***	2.131***
					(0.524)	(0.524)	(0.524)	(0.524)
PSDB	8.265***	8.265***	8.265***	8.265***	14.749***	14.749***	14.749***	14.749***
	(2.552)	(2.552)	(2.552)	(2.552)	(5.645)	(5.645)	(5.645)	(5.645)
Constant	3.364***	0.960	3.364***	0.960	1.446	0.369***	1.446	0.369***
	(0.540)	(0.182)	(0.540)	(0.182)	(0.455)	(0.132)	(0.455)	(0.132)
Observations	1,080	1,080	1,080	1,080	1,080	1,080	1,080	1,080
Log Likelihood	-527.662	-527.662	-527.662	-527.662	-520.327	-520.327	-520.327	-520.327
AIC	1077.325	1077.325	1077.325	1077.325	1068.654	1068.654	1068.654	1068.654
BIC	1132.157	1132.157	1132.157	1132.157	1138.44	1138.44	1138.44	1138.44
Note:					*p<0.1; **p<0.05; ***p<0.01			