



UNC  
SCHOOL OF LAW

# Arbitral Precedent: A Theoretical and Empirical Inquiry

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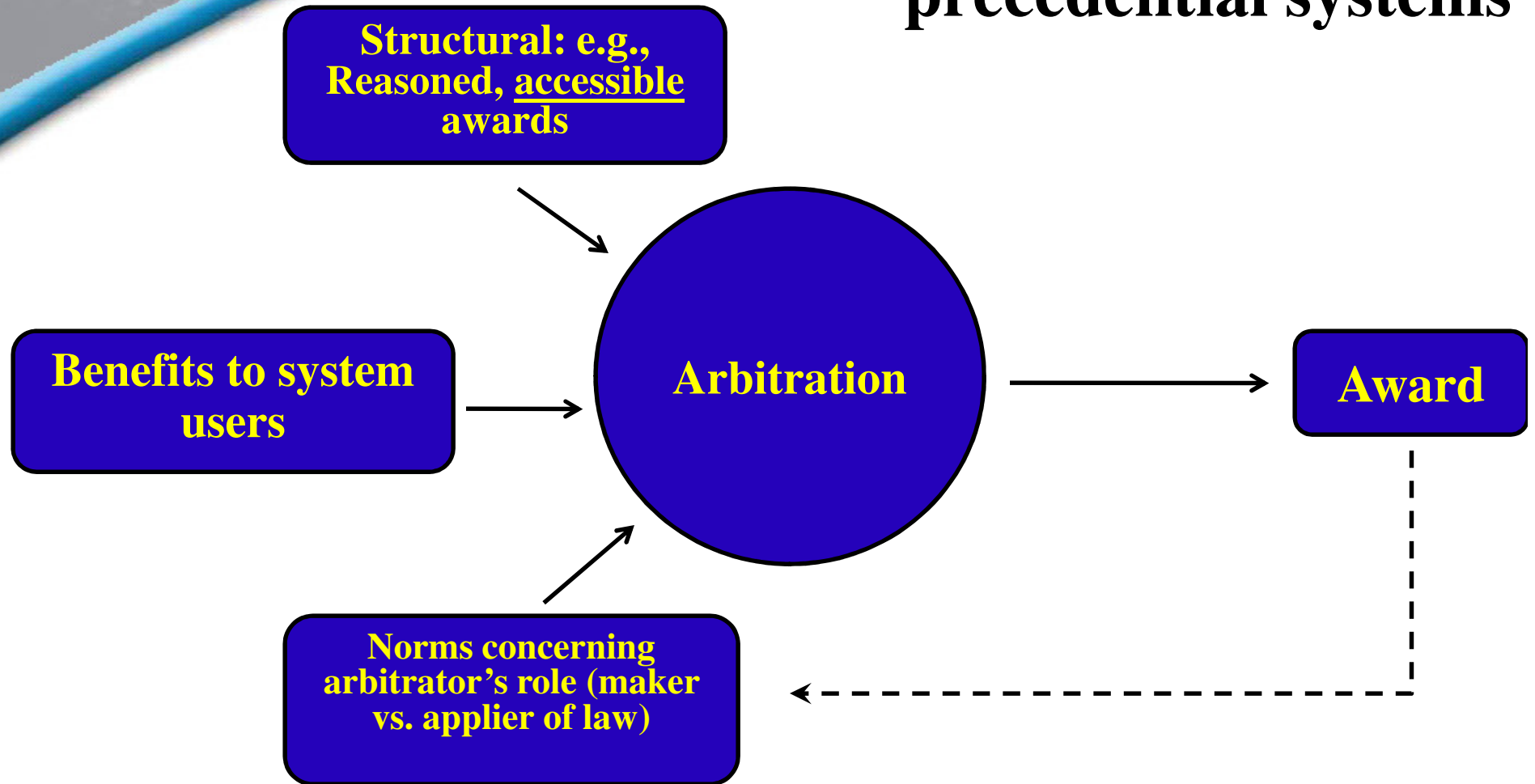


# Background

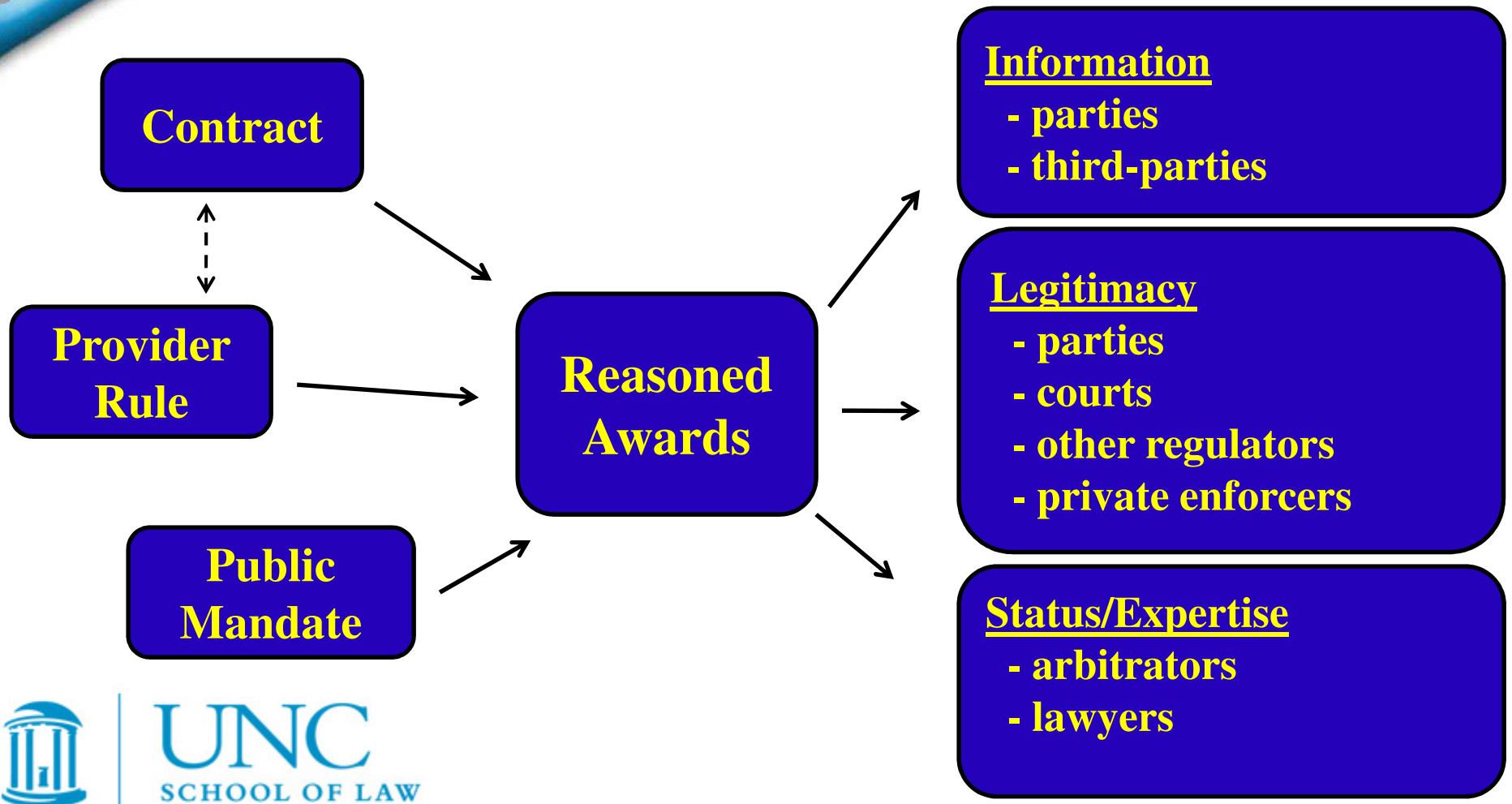
- Contrasting (stylized) views
  - Ad hoc, “lawless”
  - Systemic, “law-making”
- Core question (Carbonneau): Do “modern-day arbitrators fashion a commercial, antitrust, employment, maritime, securities, and contract law?”



# Some characteristics of precedential systems



# Reasoned Awards ... Causes and Benefits



# Some possible hypotheses...

1. Arbitration as uniformly “ad hoc” or “lawless”?
2. Reasoned, accessible awards *sufficient* to generate precedent?
3. Use of arbitral precedent:
  - Labor > Class Arbitration > Employment > Securities?
4. Impact of claim type?
  - e.g., increased reliance on state-supplied law in, say, discrimination cases?
5. Impact of repeat-play arbitrator?
  - arbitral precedent reflects arbitrator’s knowledge of system? (RP use more)
  - use of arbitral precedent signifies status? (RP use more?)
  - use of precedent (all forms) signals that arbitrator is within the mainstream? (RP use less)



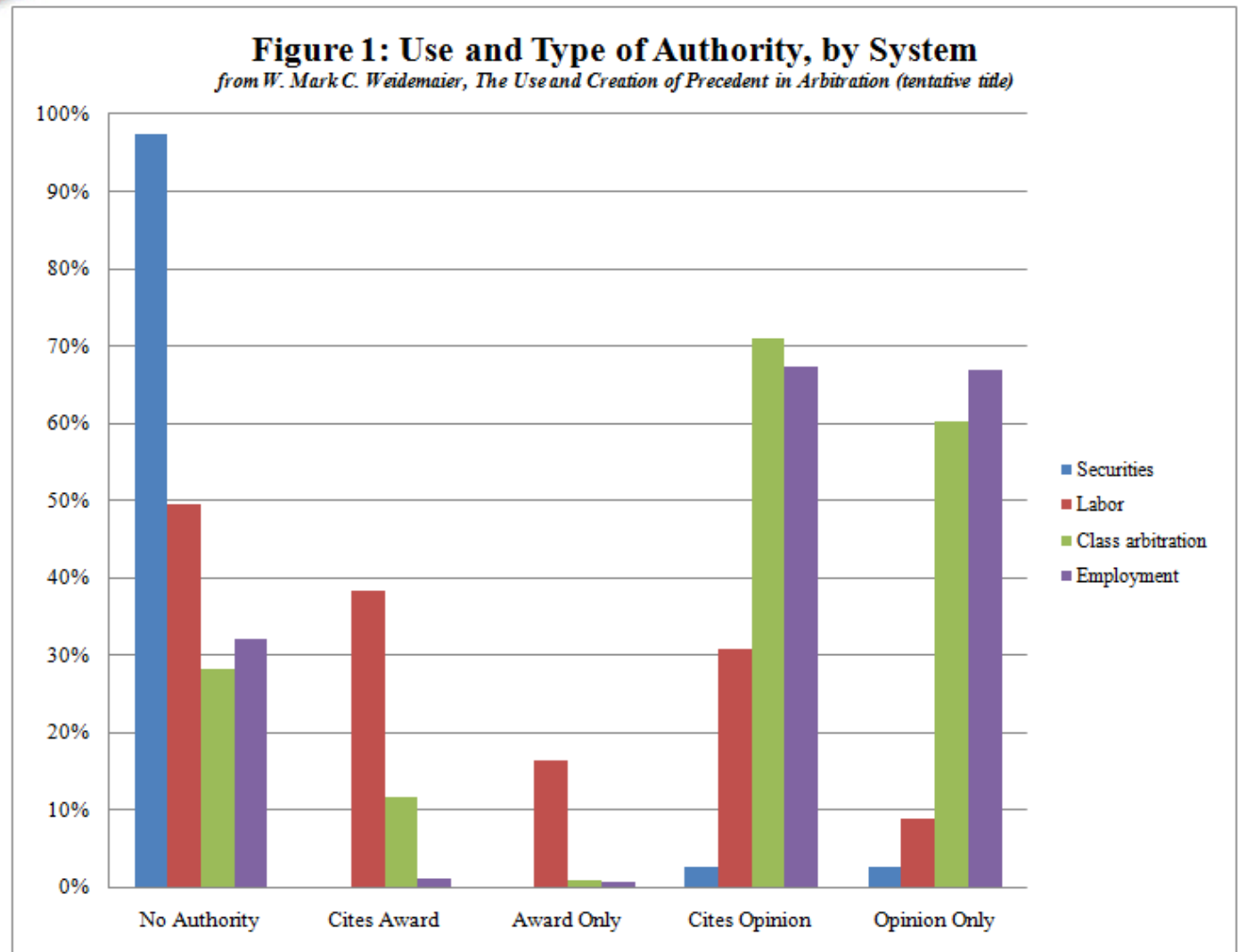
# Dataset

<u>Source</u>	<u>N</u>	<u>Percent</u>
AAA Employment	363	30
BNA Labor	360	30
AAA Class Arbitration	206	17
FINRA Securities	279	23
	1207	100

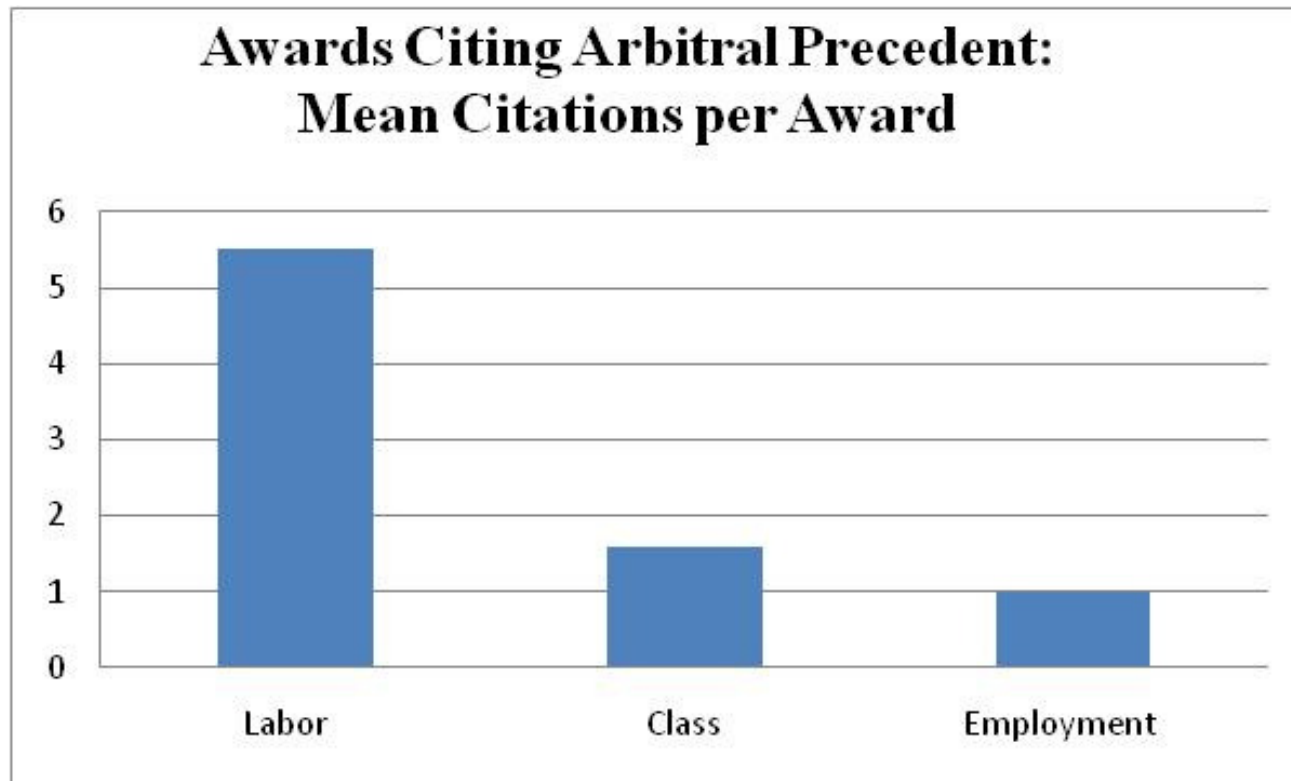
- Sampling, Coding & Reliability
- Publication bias?



# Preliminary data..

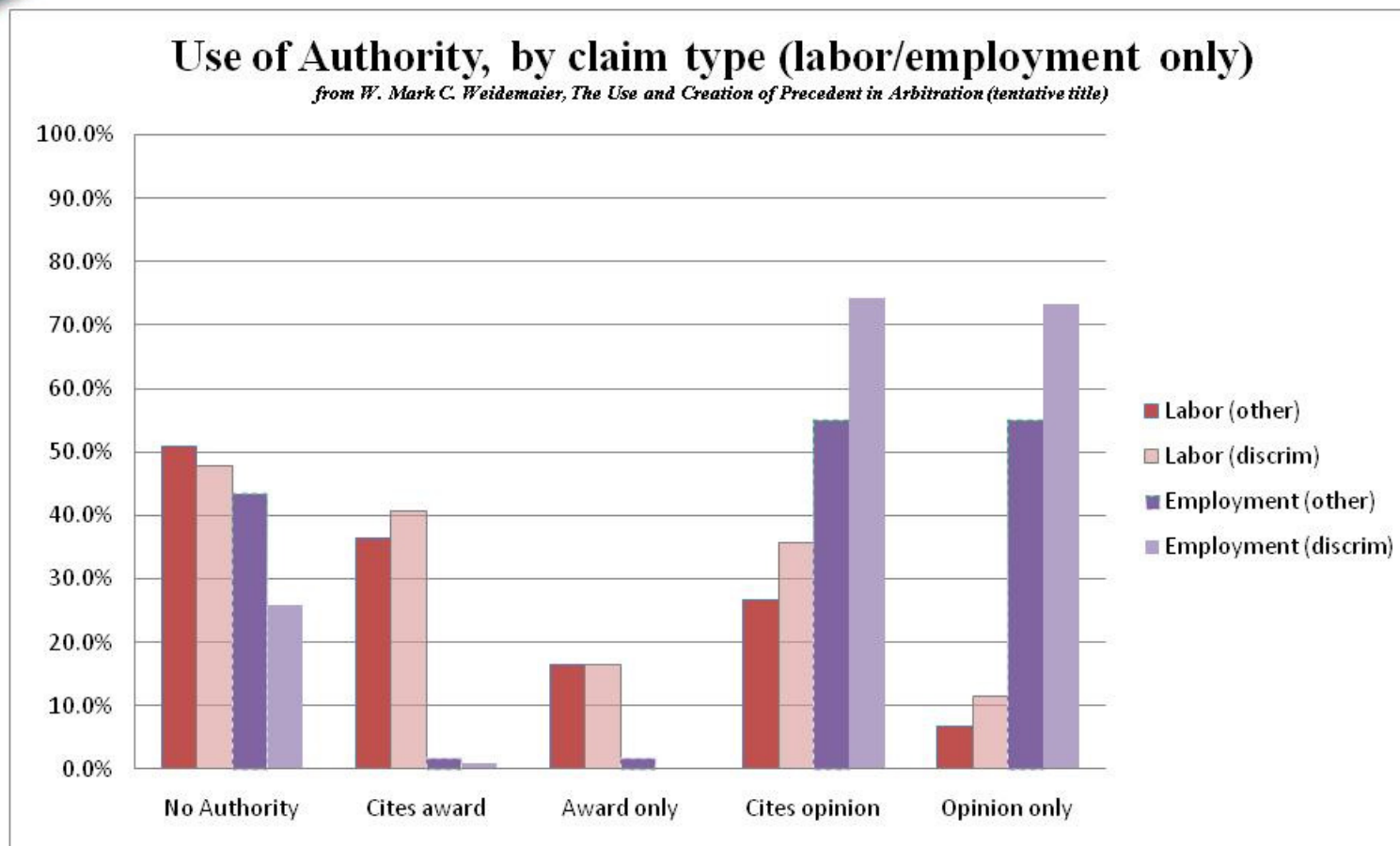


# Preliminary data..





# Preliminary data... discrimination claims



# Preliminary data... Role of Repeat-Play Arbitrators

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Whether award cites to any form of precedent

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
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	Any_System_DiscrimClaim	.499	.159	9.862	1	.002	1.647
	Constant	.634	.178	12.767	1	.000	1.886

