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Crafting Courts in New Democracies: The Politics of Subnational Judicial Reform in Brazil and Mexico

Matthew C. Ingram

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**Crafting Courts in New Democracies:
The Politics of Subnational Judicial Reform in Brazil and Mexico**

by

Matthew C. Ingram

B.A., Pomona College, 1993
M.A., University of New Mexico, 2006
J.D., University of New Mexico, 2006

DISSERTATION

Submitted in Partial Fulfillment of the
Requirements for the Degree of

**Doctor of Philosophy
Political Science**

The University of New Mexico
Albuquerque, New Mexico

August 2009

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Abstract

Why does the strength of local courts vary in new democracies? Highlighting empirical and theoretical puzzles generated by the state-level variation in court strength within Latin America's two largest democracies, Brazil and Mexico, this study offers a historical institutional explanation of judicial change. Notably, in contrast to much "new institutionalist" work – which examines the effects of formal institutional arrangements – judicial institutions here are the dependent variable. The theoretical framework builds on existing explanations regarding the effects of electoral competition and ideology, specifying underlying causal logics and mechanisms. The framework also highlights the role of actors internal to institutions (judges), and the importance of social movement theory for understanding interactions between ideological judges and sympathetic actors outside the institution, leading to judicial mobilization or behavior "beyond the bench." The empirical analysis draws on the analytic leverage of a subnational level of analysis and integrates quantitative and qualitative methods, yielding conclusions that would be impossible using either method in isolation. First, time-series cross-section analyses of judicial spending (as a proxy for court strength) examine broad relationships across Brazil's 26 states from 1985 to 2006 and Mexico's 31 states from 1993-2007.

Quantitative tools for case selection identify "nested", model-testing cases, around which I build small-N research designs consisting of three states in each country. The in-depth, qualitative analysis draws on 115 personal, semi-structured interviews with judges and other legal elites, archival evidence, and direct observation to trace the process of judicial change. Overall, electoral competition operates as a pre-condition for reform, but its effect is indeterminate once a minimum threshold of competition is crossed. Ideology has the most consistent and meaningful effect on reform. Actors and their intentions matter. However, the expression of these intentions is contingent upon the nature of opportunity structures, including mobilization strategies and alliances, as well as overlapping historical processes. In short, I find that strong reforms are most likely where progressive judges coincide with sympathetic, left-of-center politicians. The results emphasize the role of ideas and the conditional expression of these ideas, that is, the contingency of intentionality.

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1. Crafting Courts in New Democracies

1.1. Two Puzzles of Judicial Reform

Over the last three decades, the twin processes of democratization and economic liberalization raised the profile of courts in Latin America. Judicial strength and the rule of law are increasingly understood as vital to political and economic development. Regarding political development, strong legal institutions enhance the ability of individuals to vindicate rights and liberties, promoting a broader and deeper form of democratic citizenship, and improve mechanisms of accountability, maintaining checks and balances and guarding against arbitrariness and corruption. Calling attention to this democratizing role of judicial institutions, O'Donnell (1993) and the UNDP (2004) highlight the inadequacy of minimalist definitions of democracy that are associated with merely procedural participation, which is usually reduced to voting. Echoing Marshall's (1965) trichotomy of rights, the UNDP identifies political, social, and civil dimensions of democratic citizenship. Courts and other components of the "legal complex" (Halliday et al. 2007), when working well, enhance the civil dimension of democratic citizenship – that valence of citizenship based on the day-to-day effectiveness of a bundle of legal rights and liberties that constitute real agency in modern democracies – especially for low-income groups that lack other means by which to defend themselves. For economic development, strong legal institutions provide transparency and predictability, stabilizing contracts and property rights and facilitating commercial transactions. These benefits of strong courts translate into economic efficiency and investment gains, promoting growth and promising prosperity (Kaufman et al. 1999; Hirschl 2004, 46, 47). The sound

development of both democracy and markets, therefore, hinges in part on the strength of courts.¹

Despite the compelling normative argument for building strong courts, descriptive accounts teach us that there is wide variation in court strength, not only cross-nationally but also across regions within countries. Given cultural and institutional pressures for policy convergence and harmonization, variation within single countries is perhaps most intriguing from empirical and theoretical perspectives. For instance, judicial spending varies dramatically across states within Mexico and Brazil. Figures 1.1 and 1.2 help visualize this intra-national variation in court strength. These figures map judicial spending data – court budgets – across the Mexican and Brazilian states, respectively. Figure 1.1 shows the average amount of judicial spending per capita in Mexico in constant, 2000 pesos, from 1993 to 2007. Figure 1.2 shows the average amount of judicial spending per capita in Brazil in constant, 2000 reais, from 1985 to 2006. In both figures, light shading indicates low court budgets and dark shading indicates high court budgets.²

¹ Like “political economy”, the constitutive relationship between legal institutions, politics, and economics generates the terms that define the field and work within it, e.g., “public law”, “political jurisprudence”, “judicial politics”, or “constitutional political economy”. We might even speak of “judicial economy” or “judicial political economy”.

² Both maps generated with ArcGIS 9.3, using spending data from large-N analyses in Chapters 4 and 5.

Figure 1.1. Average judicial spending per capita in Mexican states, 1993-2007 (constant 2000 pesos).

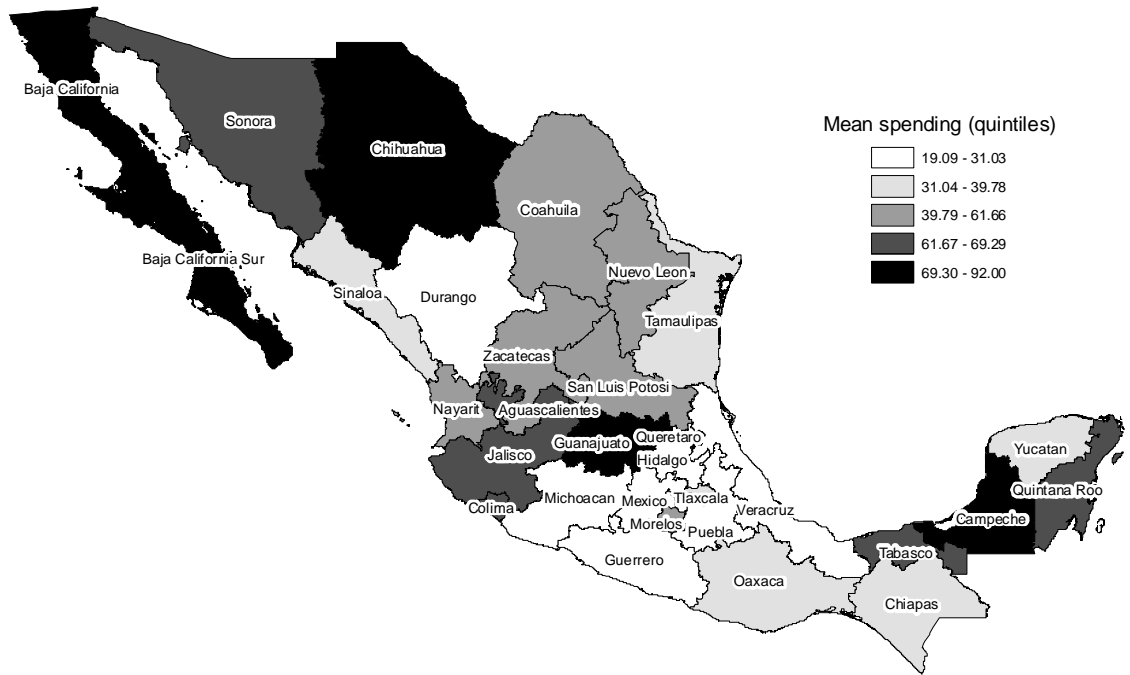
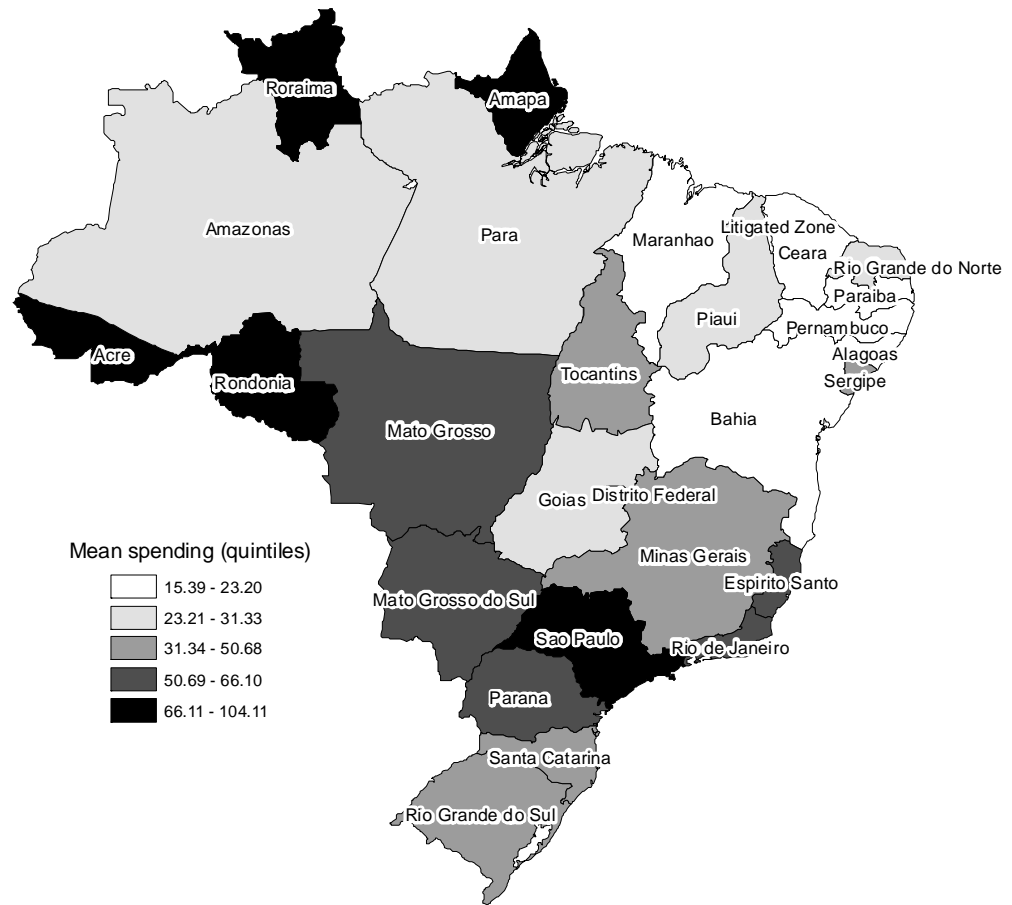


Figure 1.2. Average judicial spending per capita in Brazilian states, 1985-2006 (constant 2000 reais).



The financial strength of courts varies substantially across territorial units within both Mexico and Brazil, granting vastly different financial resources to local judiciaries within these single countries. As one Brazilian judge noted, echoing repeated comments from judges in both countries, “the budget is the lifeblood of the judiciary” (Interview 136). Without resources, no reform or improvements can be made, including staffing, materials, and physical investments.³ Thus, the variation in Figures 1.1 and 1.2 signals

³ In Chapters 4 and 5, I conduct econometric analyses of judicial spending across all states in each country to identify the determinants of this variation.

vastly different institutional capacities for the judiciary across territorial units within each country.

Variation in the strength of state courts extends beyond the size of judicial budgets. The following vignettes outline the general contours of institutional changes in Mexico and Brazil, along with some of the central political dynamics associated with these reforms.

On May 23, 2006, a constitutional reform in the Mexican state of Michoacán altered the financial autonomy, institutional design, and the career structure of judges in the local judiciary, yielding one of the strongest administrative designs across the 32 Mexican states. The reform process was highly contested, capping more than three years of local political struggles in which left-of-center politicians belonging to the Party of the Democratic Revolution (PRD) promoted the reform initiative and ideologically sympathetic, progressive judges were its chief architects. The reform project was opposed by politicians and judges affiliated with the previously hegemonic Institutional Revolutionary Party (PRI). In the central state of Aguascalientes more than a decade earlier, in 1994, a neoliberal⁴ PRI governor, closer ideologically to the right-wing National Action Party (PAN), also pursued a judicial reform. Though this earlier reform was milder than the one in Michoacán, it nonetheless encountered strong opposition, especially from local judicial elites, some of whom resigned rather than submit to the institutional alterations. Once the neoliberal, PRI governor left office, the gains from his

⁴ I use “neoliberal” to refer to a set of policies oriented towards free markets, or “liberalizing” the economy. Although the term is itself contested, it nonetheless is useful shorthand in Latin America (and beyond) to identify a bundle of policies that, since the 1970s, has emphasized, among other issues, fiscal discipline, deregulation, and privatization, and has generally been supported by the political right and opposed by the political left. Alternate terms include “neoclassical” economics, “structural adjustment”, or “market reforms” (see, e.g., Williamson 2000; Naím 2000; Weyland 2004; Roberts 2008).

project were reversed by the combination of conservative, traditional judges and a more traditional, clientelist PAN administration. And in the state of Hidalgo, which continues to be a bastion of the once-dominant PRI, reform arrived late in 2006 and in weak, superficial form, essentially leaving existing political and judicial elites undisturbed.

In Brazil, in the southern state of Rio Grande do Sul, a center-left governor belonging to the Democratic Labor Party (PDT) was the first to delegate financial and administrative autonomy to the local judiciary in 1991-1992. In doing so, the governor was limiting his own power, effectively constraining himself. Crucially, he was responding to reformist initiatives from the judicial leadership and to the recent pressure of striking judges. A close friendship between the governor and the president of the state court facilitated communication about reform. Several years later, in 1999-2000, a leftist governor belonging to the Workers Party (PT) sought to reduce the court's budget, generating constitutional litigation in which the judiciary sued the governor. Meanwhile, in the state of Acre, a governor from the same leftist party (PT) combined with progressive, ideologically sympathetic judicial leaders to strengthen the financial resources and staffing of the court. In contrast, in the northern state of Maranhão, where traditional, conservative elites sympathetic to the military dictatorship of 1964-1985 still dominate local politics, courts are by all accounts extremely weak institutions, financially and administratively. The judiciary remains a source of patronage for local elites, and there is increasing tension between progressive, reformist lower-level judges and conservative, anti-reform judicial elders.

Overall, court strength varies substantially over time and across space within both Mexico and Brazil. Judicial budgets vary widely. Further, institutional design and career

structure in Mexico vary from state to state. In some of the strongest cases of reform, the selection of judges follows a fairly transparent civil service process, and selection to the state's highest court is no longer dominated by the executive branch, having been delegated to administrative organs that are often composed of judges, legislators, and other politicians. The administrative organs generate a list of candidates, which is then turned to the legislature for a vote. Indeed, these administrative organs – judicial councils – can offer meaningful benefits depending on their structure, composition, and powers. Michoacán offers a strong council on all three counts, and is an example of positive court strengthening in Mexico. Conversely, in other states the judiciary remains fairly impoverished and council reforms are superficial, perpetuating institutional weaknesses. Selections to the state's supreme court are still dominated by the governor, raising questions about independence, competence, and corruption. Hidalgo is an example of this kind of state.⁵

In Brazil, institutional designs and career structure are fairly centralized nationally, yielding minimal variation along these two dimensions compared with Mexico. Variation in Brazil emerges in terms of administrative capacity – adequate staffing, materials, and physical infrastructure. Indeed, variation in these areas led one prominent observer of Brazilian courts to comment that the administrative unevenness across Brazil's state courts yields “multiple judiciaries” (Falcão 2006). In some states, courts are well-staffed and equipped, and therefore function reasonably well. This is the case in Rio Grande do Sul. It is also increasingly the case in Acre, where judges who complained of once having to cover two or three different geographic jurisdictions for lack of judges, or bring their own paper on which to write decisions, are now relatively

⁵ Both Michoacán and Hidalgo, along with Aguascalientes, are examined in Chapter 6.

satisfied with staffing levels and working conditions. Other states offer striking examples of poor staffing and infrastructure, and misuse or abuse of materials, resources, and power. Maranhão is an example of this kind of state, where judges on the state supreme court have historically appropriated most of the institution's resources for themselves, paying little attention to first-instance courts or the daily operation and administration of justice.⁶

In both Mexico and Brazil, the uneven strength of local courts highlights substantive and theoretical concerns in the study of democracy and its public institutions. These empirical and theoretical puzzles motivate this dissertation.

1.1.1. An Empirical Puzzle

First, the unevenness of democracy identifies a substantive problem with the quality of democracy in both countries, namely, that there are better institutions in some territorial units than in others. This unevenness demands an explanation because of the multiple ways irregular state strength or differential institutional capacity affects the everyday lives of ordinary citizens and the interactions between branches of government. That is, the variation in court strength across the Mexican and Brazilian states is part of a broader problem, namely, the irregular, unbalanced, or uneven character of democracy and democratization within single countries (O'Donnell 1993; Cornelius 1999; Snyder 2001a; 2001b; Gibson 2005), highlighting issues of both democratic citizenship (UNDP

⁶ In Maranhão, for example, first-instance judges have had to invest their own money to pay for plumbing and basic building maintenance (*AMMA Noticias* 2008d), or courthouse evidence rooms have been burglarized for lack of security (*AMMA Noticias* 2008a; 2008b; 2008c). Meanwhile, state supreme court judges (*desembargadores*) have historically hired hundreds of discretionary employees; hired "ghost employees" (*servidores fantasma* – individuals who receive a paycheck but do not actually work at the court); frequently violated nepotism norms and laws; arbitrarily increased their own salaries and benefits; and, despite the concerns just mentioned regarding the security of courthouses, used more than 100 officers of the military police to guard their own private homes. Chapter 7 examines judicial change in the three Brazilian states mentioned here.

2004) and accountability (Gloppen et al. 2004; Schedler et al. 1999). Regional institutional weakness within individual countries resonates with O'Donnell's criticism of the coexistence of regions with strong public institutions alongside "brown areas" in new democracies – territorial spaces where functional public institutions fail to develop. These institutional lacunae undermine the ability of citizens to seek redress and vindicate individual rights and liberties in these regions, thereby eroding the real effectiveness of these rights and liberties. Under these conditions, the core of the legal or "civil" dimension of citizenship is diminished, truncating democratic citizenship (Marshall 1965; UNDP 2004). Further, weak judiciaries translate into poor restraints on other branches of government, increasing the risk of arbitrary, abusive, or unchecked power. Put simply, variation in court strength within a single country is itself a meaningful empirical problem, posing the kind "big, substantive question" or "real-world puzzle" that Pierson and Skocpol (2002, 695-696) emphasize as being "inherently of interest to broad publics as well as to fellow scholars", and therefore at least as important for political research as theoretical puzzles (see also Bates et al. 1998; Thelen 1999). That is, political research should be relevant to and engaged with public concerns. Understanding the nature and sources of the "patchwork" character of the state (Snyder 2001b) – the "crazy quilt" or "highly variegated mosaic" of democracy and democratization (Cornelius 1999, 4, 12) – is a crucial challenge for students of democracy, and a central concern of this dissertation.

1.1.2. A Theoretical Puzzle

Beyond this empirical puzzle, patterns of judicial reform in the Mexican and Brazilian states pose a second, theoretical puzzle for students of judicial change and institutional development more broadly. The empirical puzzle above underscores the

need to understand the origins of strong institutions, which leads directly into theoretical debates about what we already know about institutional development and whether this existing knowledge is sufficiently complete. With regards to judicial reform at the local level in Brazil and Mexico, existing explanations fail to provide reasonably satisfying accounts of the reform processes outlined above. Specifically, rational-strategic and cultural-ideational explanations fail to provide convincing accounts of patterns of reform, primarily because of a lack of attention to issues of timing, sequencing, contingency, and context, including meaningful patterns of change occurring at different levels of government, the lasting legacies of authoritarian conditions, and the intersection and interaction of these patterns with local processes of reform.

Prominent rational-strategic accounts draw on rational incentives derived from electoral competition to explain why politicians strengthen courts. However, multiple causal logics underpin this expectation, generating a problem of behavioral equivalence, equifinality, or causal complexity. That is, disparate and perhaps competing or complementary causal pathways can generate the same institutional outcome. For instance, politicians can improve institutions in order to remain or advance in office (“re-election logic”; Beer 2003; 2006), to signal credible commitments to political minorities (“signaling logic”; Elster 2000; Ginsburg 2003, 28), or as political insurance (“insurance logic”; Ginsburg 2003; Finkel 2005; 2008). Further, even the insurance logic is composed of at least three *sub*-logics, identifying legislative protagonists engaged in “profit-maximization” (Landes and Posner 1975), or political majorities engaged in either “self-protection” (Ginsburg; Finkel) or “policy preservation” (Hirschl 2004).

Beyond the problem of behavioral equivalence, the local processes of reform do not conform with these prominent logics and there are strong theoretical reasons to expect the applicability of these logics is conditioned by the identity of relevant actors (i.e., preferences or ideology), as well as contingent on secondary or other historical processes. For instance, many reform projects begin *after* electoral victories by ascendant parties that formed part of the opposition during the authoritarian regime. This timing, i.e., the sequence of elections and reform, cuts against the re-election logic, as well as all of the insurance arguments. Regarding the insurance sub-logics, this sequence of events is especially problematic for the “self-protection” argument because the incentive for political insurance is strongest for outgoing, authoritarian elites, not newly empowered, ascendant parties (see Hilbink, forthcoming 2009). Further, Hirschl’s “policy preservation” thesis is explicitly an argument about political insurance, but unlike other insurance arguments also hinges upon the ideological identity of dominant elites. Specifically, Hirschl’s elites are “secular, neoliberal” elites who strengthen courts in order to insulate their policies from the “vagaries of democratic politics” (214). In Mexico and Brazil, authoritarian elites were not ideological in this way. Rather, dominant elites were sustained by networks of patronage, corporatism, and clientelism, so it would be more likely that – when threatened by electoral competition or anticipating an electoral threat – they would protect the traditional source of their power. That is, where authoritarian elites are still dominant, non-ideological “patronage preservation” is perhaps more likely than Hirschl’s ideological “policy preservation”.

Further, with the exception of the proposed “patronage preservation logic”, the above explanations share an optimism regarding elections in that they uniformly expect

elections to have a positive effect on courts. Put simply, competition is always expected to improve institutions. This expectation is overly mechanical, however, and is at odds with evidence regarding the failure to reform in some states despite the onset of competition and party turnover. For instance, reforms in Rio Grande do Sul and Acre failed to occur early on despite initial increases in competition and alternation in power. More importantly, the optimism of electoral accounts fails to explain negative counter-reforms like the one in Aguascalientes.

In contrast to the optimism of these election-based accounts, veto player theory (Tsebelis 2002) complicates matters by suggesting just the opposite – that competition has negative consequences. That is, competition increases the number of relevant political actors or “veto points”, and this increase makes policy change harder, not easier. In short, competition should make judicial reform more difficult.

Up to this point, election-based expectations are plagued simultaneously by behavioral equivalence and indeterminacy. Rising electoral competition can have either positive or negative effects, perhaps even both, and multiple causal logics can overlap in independent, complementary, or competing ways. Election-based accounts of reform are ill-equipped to handle these elements of contingency and complexity.

Moreover, these explanations – both optimistic and pessimistic – emphasize actors external to target institutions, i.e., exogenous actors – namely, politicians – neglecting the role of endogenous actors – judges and other legal elites. Yet judges play prominent roles “beyond the bench” in shaping reform. For example, judges in both the Mexican and Brazilian states engage in lobbying and litigation, and judges in Brazil

frequently engage in labor actions. Overlooking this kind of “extrajudicial” activism by judges fails to account for central agents of reform observed in Brazil and Mexico.

The pattern of reform in Aguascalientes illustrates many of the ways in which reform does not comport with existing accounts, highlighting temporal dynamics, the complexity and contingency of electoral dynamics, the need to integrate both politicians and judges, as well as cultural-ideational features of reform. As outlined earlier, Aguascalientes experienced an early reform (1994-1995) and a subsequent counter-reform (1999-2001). The reform is inconsistent with insurance arguments due to its early timing and the fact that the PRI did not expect to lose local office in 1994. On the other hand, the reform is consistent with veto player theory in that it occurred under a unified, PRI-aligned administration, that is, a single-veto-player environment. Similarly, counter-reform was easy because it also occurred in a single-veto-player environment. However, the character of the electoral landscape does not explain the policy reversal since both reform and counter-reform occurred in single-veto-player contexts. Rather, the identity of relevant actors is important. Specifically, a PRI-aligned administration facilitated reform and a later PAN-aligned administration facilitated the counter-reform. However, conservative judicial leaders also motivated this reversal, so the identity of both political and institutional actors is meaningful, as well as the nature of alliances between them. Finally, the roles of the PRI and PAN in the reform process confound existing accounts of reform based on ideology in that the PRI is generally considered non-ideological or centrist and would therefore not be expected to promote reform, while the PAN’s right-wing social and economic agendas should lead it to promote reform. Thus, while electoral competition and ideology are useful analytic categories, their effect is

interactive and complex, especially as we consider the unevenness of ideological orientation within a single party across states.

Summarizing, prominent realist-strategic and cultural-ideational explanations of institutional change do not account for the patterns of reform in the Mexican and Brazilian states. Elections matter, but multiple, inconsistent, and even contradictory causal logics undergird the relationship between electoral competition and judicial change, and institutional actors (judges) appear to matter as much as politicians. Ideology also matters, but preferences and intentions do not map cleanly onto party identification, and actors may or may not be able to express these preferences. Rather, preferences are also conditioned by the strategic terrain, at least part of which is defined by electoral competition. In short, the effects of both elections and ideology are complex, conditional, and contingent. Central concerns with improving our understanding of judicial change, therefore, hinge on issues of the identity of actors and their preferences or intentions, the unevenness of these preferences among apparently similar actors (e.g., ideological variation within same party across states), the nature of alliances, as well as timing, contingency, and context. In short, local reforms in Brazil and Mexico do not conform to prominent expectations regarding the sources of institutional change, generating a theoretical puzzle alongside the empirical puzzle outlined above. The discussion above highlights the causal complexity of reform processes, but also emphasizes issues of timing, sequence, contingency, and overlapping historical processes. These features of subnational reform in Mexico and Brazil suggest a historical institutional approach to understanding reform.

1.2. A Historical Institutional Solution

This dissertation offers a historical-institutional solution to these puzzles of judicial change across the Mexican and Brazilian states, contributing new evidence and insights regarding the character and sources of the territorial unevenness of democracy within individual countries. The strength of historical institutionalism is precisely its ability to address issues of timing and temporal order (sequencing), contingency and conditionality, and to contextualize causal processes amidst other ongoing and intersecting processes and the legacies of prior events and patterns. Thus, the approach presented here draws on these characteristic features of historical institutional (HI) accounts to help resolve the empirical and theoretical puzzles outlined above (Thelen 1999; Pierson and Skocpol 2002; Mahoney and Rueschemeyer 2003a; Smith 2008).⁷

Importantly, the contextualism, contingency, and conditionality of HI accounts do not mean that theoretical generalizations are impossible or unlikely. Rather, theoretical accounts must be (i) attentive to the timing and sequence of key events, i.e., temporal onset, order, and duration matter, and causal processes often unfold over long periods of time or are conditioned by events that took place in the past; (ii) explanations cannot be de-contextualized; and (iii) institutional development can be uneven over time, i.e., institutional change can be progressive (e.g., positive reforms) or regressive (e.g., negative counter-reforms), so expectations regarding outcomes should be neither

⁷ Pierson and Skocpol (695-696) identify three defining features of historical institutionalism: (i) big, substantive questions, (ii) “taking time seriously”, and (iii) analyzing “macro contexts” and the “combined effects of institutions and processes”. Mahoney and Rueschemeyers, however, in restricting their discussion to “comparative historical analysis” – what they describe as a subset of historical institutionalism – replace “big questions” with “causal analysis”. Thelen implicitly acknowledges all of the above as important, and also emphasizes the importance of multiple intersecting and interacting processes over time and the need to identify underlying mechanisms.

automatic nor overly optimistic. This approach seeks causal regularities, but the ontology of HI also acknowledges the complexity of causal relationships (Hall 2003).

It should also be emphasized that a historical institutional approach does not necessarily exclude existing theories or suggest a particular method of analysis. Rather, taking time and historical processes seriously (Pierson 2004; Thelen 1999) can be reconciled with theoretical and methodological diversity. Thus, the theoretical framework developed in Chapter 2 builds on the rational-strategic and cultural-ideational approaches already mentioned. Furthermore, the theoretical framework also draws on social movement theory (McCadam, McCarthy, and Zald 1996) and closely-related theories of legal and judicial mobilization (McCann 1994; Epp 1998; Hilbink 2007b) to understand the “complex strategic interaction” (Sikkink 2005) of judge-led reform efforts, i.e., judicial behavior beyond the bench.

1.3. Conceptual Clarification: Court Strength in Mexican and Brazilian States

Within the literature on judicial politics and public law, and the rapidly expanding literature in comparative judicial politics, “court strength” can mean at least three different things. In roughly chronological order from the perspective of the sequence of court activities, research addresses (i) institution-building, (ii) decision-making within these institutions, and (iii) the societal impact of judicial decisions. As with many categories in the social sciences, these three categories overlap and there is feedback between and among them. For instance, a weak institution may not have the jurisdictional power, resources, or administrative capacity necessary to either decide a case or shape good decisions on a consistent basis. Alternatively, a poor decision may weaken the

institution from which it emanates. Nonetheless, the three categories are analytically distinct and are useful for situating the current study and for clarifying the concept of judicial strength that will later be operationalized as a dependent variable.

First, institution-building refers to the process of creating a functional judiciary. The current study fits squarely this area. In asking whether a court is strong, scholars seek to understand instances of crafting and constructing democratic institutions, specifically the *origins* or *genesis* of positive institutional change. Who promotes stronger institutions? Why do they work toward this end? How does institutional growth and expansion happen? This area of research can also explore the persistence or stability of weak or strong institutions, as well as the decay or deterioration of institutions, fitting broadly into a category of institutional “development” rather than institutional “choice” or “selection” (Pierson 2000). Second, perhaps the largest set of scholars, and this is certainly true of judicial politics in the U.S., examine judicial decision-making. Whether called “executive-judicial relations” (Helmke 2005) or “constitutional interpretation” (Whittington 1999; 2007), this set of scholarship focuses on the behavior of judges *on the bench*. The phenomena under examination are instances of court rulings. Why did the judge or judges decide in favor of the executive branch? Why did they decide not to hear a case? How did a judge go about making her decision? Third, judicial impact refers to the aftermath of a decision. Once a judicial body made a decision, what were the societal consequences? Why was the order carried out? Why was a judgment not enforced? More broadly, how was society changed?⁸ As noted above, this study is concerned with the first

⁸ Rosenberg’s (2008[1991]) analysis of the impact of the U.S. Supreme Court is a now classic study in this area.

set of phenomena – institution building or development. Why build courts? Why and how are strong democratic institutions crafted?

Clarifying further, “crafting courts” here refers specifically to building functional judicial institutions at the subnational level in Latin America’s two largest democracies. In this regard, it is important to note that the baseline condition in both of these countries is one of weak, dependent, and impoverished courts. Thus, a primary emphasis is on the origins of positive institutional reform. However, it is also possible that once institutions begin to change in a positive direction, opposing actors may promote negative, corrosive counter-reforms. Throughout this study, *judicial change* and *judicial reform* are used interchangeably, though change can also refer to negative, counter-reform. In this regard, the current study resonates with broader studies of the genesis of institutions, as well as with research on institutional change and continuity in comparative politics (Mahoney and Rueschemeyer 2003b; Pierson 2004; Thelen 2004). Importantly, in contrast to much “new institutionalist” work – which examines the effects of formal institutional arrangements – judicial institutions here are the dependent variable.

1.4. Subnational Analysis: Substantive, Methodological, and Theoretical Gains

In Latin America, where a full sixty per cent of the population and seventy-five per cent of economic production is generated by the federal systems of Argentina, Brazil, and Mexico (ECLAC 2004), subnational research is critical. State courts in these federal systems are the source of the majority of litigation. In Brazil and Mexico, for example, state courts are the first point of contact between citizens and the justice system, and more than 80 per cent of all litigation originates in state courts (*Ministerio da Justiça*

2004; INEGI 2000; 2005). In short, state courts are “the foundation of justice” in large, federal countries (Fix-Fierro 2004, 287).⁹ State courts host the vast majority of litigation activity, so ignoring them is problematic for our understanding of courts in democracies.¹⁰ Stated otherwise, given the link between the effectiveness of courts and the consolidation of democracy and markets, understanding the sources of this state-level variation is of critical importance for both political and economic development.

Beyond its substantive importance, subnational research offers methodological advantages over cross-national studies of policy change. Substantial variation in judicial strength exists across states within individual countries like Brazil and Mexico. This within-country variation enhances the leverage of statistical analyses. Additionally, Snyder (2001b) echoes Lijphart’s (1971, 689) advice on the strengths of “intranational” research designs, reminding us that subnational research provides greater analytic leverage, controlling for country-level factors while also drawing on the greater unit homogeneity of states vis-à-vis whole countries.

Furthermore, subnational analysis – particularly subnational analysis of legal institutions – is a promising area for the development of democratic theory. As discussed above, one of problems with democracy that motivates this research is the uneven coverage of the state in new democracies. O’Donnell’s (1993), Cornelius et al. (1999), Snyder (2001a; 2001b), and Gibson (2005) remind us of the importance of subnational research for understanding “spatially uneven” processes and phenomena, and of the theory-building value of understanding how policy change is shaped by different levels

⁹ Author’s own translation from Spanish. Original quote: “Los sistemas judiciales de las entidades federativas constituyen ... la base de la justicia en el país” (Fix-Fierro, 286-87).

¹⁰ Chavez (2004) and Beer (2006) offer notable contributions for understanding judicial change at the subnational level.

or territorial units of a regime, i.e., how policy moves from states to the federal center or vice-versa, or how policy moves laterally across territorial units within a single country. Institutional change in the judicial sector is especially suited to this kind of research, given that state courts are closer to ordinary citizens than lofty high courts, weak judicial institutions create particularly severe “brown areas”, and policy change in the judicial sector is susceptible to influences from different levels of a regime. Moreover, given the geographic reach of local courts – i.e., unlike executives or legislatures, courts are dispersed throughout cities and judicial districts in every state – state judiciaries may be uniquely situated among the three branches of government to transform state-society relations and exert a local democratizing effect.

1.5. Overview of the Argument

The central argument is that electoral competition and ideology shape court strength in the Mexican and Brazilian states, though in ways and for reasons that do not necessarily align with conventional understandings. That is, electoral competition and ideology influence “how” and “why” courts become stronger, but conventional understandings of judicial reform are not always helpful. In brief, a minimum amount of electoral competition is a necessary pre-condition for reform, but once this minimum threshold is crossed, the effect of competition is highly contingent on (a) the identity of relevant political and institutional actors, and (b) the alliances between and among these actors. Actors and their intentions matter, but these actors succeed to varying degrees depending on their ability to create and leverage alliances to overcome obstacles and constraints. Specifically, I find that strong reforms are most likely where progressive

judges coincide with sympathetic politicians. That is, where left-of-center preferences from within the judiciary intersect with left-of-center preferences outside the judiciary. These alliances are frequently both ideological and affective, in the sense that close friendships and loyalties between judicial leaders and governors were a crucial factor in three of four instances of successful reforms in both Mexico and Brazil. The findings highlight the role of ideas in the reform process, putting ideational dynamics – ideology, friendship, and loyalty – at the center of judicial change.

Chapter 2 presents the theoretical framework, elaborating on some of the theoretical issues introduced in this opening chapter. Electoral competition is generally expected to exert a positive pressure on institutional change and performance, but the precise causal logic behind this expectation is not always clear. Chapter 2 identifies four distinct causal logics – re-election, signaling, insurance, and opportunity – in addition to three sub-logics that implicitly motivate the “insurance” logic above. Moreover, veto player theory complicates expectations in that an increased number of veto points should make policy change harder, not easier. This chapter also proposes a “patronage preservation logic” that helps us understand the persistence of dysfunctional judicial institutions in new democracies. Beyond electoral competition, this chapter also outlines expectations regarding ideology in Mexico and Brazil, and concludes by discussing ways in which elections and ideology can interact, and the way the effects of this interaction can be shaped by temporal dynamics. For instance, ideology may have a positive effect in a newly competitive electoral setting, but may have a different or even negative effect with the same amount of competition if that competition has lasted for several electoral cycles. That is, the duration of electoral dynamics can influence the effect of ideology.

Drawing on this specification of causal logics, I find support only for the veto player, opportunity, and patronage preservation logics. That is, competition generates obstacles to reform by increasing the number of veto points, but in post-authoritarian settings this increase in veto points also creates political “openings” or “opportunities” for the mobilization of reform initiatives, resonating with social movement theory. However, where dominant elites depend on patronage and clientelist networks for their power, signs of electoral competition can trigger “patronage preservation”, i.e., the entrenchment of elites that, unlike other electoral logics, has a distinct motivation and does *not* result in the strengthening of courts. Indeed, this dynamic is found in both Hidalgo and Maranhão. The fact these two states are from different countries and come from different styles of authoritarianism suggests the patronage preservation logic may be generalizable to other new democracies in Latin America and beyond.

Notably, ideas and ideological commitments are still able to gain traction without political openings, and these ideas and commitments can also overcome the obstacles of veto players. Indeed, across both Mexico and Brazil, the evidence suggests that normative, cultural, or ideational commitments are consistent forces behind judicial change, while the electoral incentives associated with competition are not. Stated simply, competition is not a necessary condition for reform, but ideology may be a sufficient one.

In sum, conventional rational and strategic incentives generated by electoral competition do not provide an adequate explanation of judicial change in the empirical analysis, but ideas and ideological commitments do. The findings suggest an important role for cultural-ideational factors and, closely related, political agency, in the study of

judicial change and state-building. What I find is that institutional strength is an *intentional* outcome, not a mere byproduct of democratization, and that institutional change is largely *endogenous* (i.e., judge-led) rather than a response to exogenous influences or incentives.¹¹ These findings improve our understanding of the origins of strong institutions in new democracies, offering methodological, empirical, and theoretical contributions that complement existing comparative scholarship on judicial politics and institutional change.

1.5.1. Methodological Contributions

Methodologically, the research design leverages a subnational level of analysis, explicitly integrates the quantitative and qualitative phases of analysis by “nesting” a well-predicted case within the quantitative analysis in each country, and then selects two additional states in each country for controlled comparison. This combination of methods draws on the strengths of (i) subnational analysis, (ii) large-N, quantitative methods, (iii) nested designs, (iv) small-N, controlled comparisons, and (v) within-case, theory-guided process tracing (Hall 2003; Falletti 2006).

While none of these methods are novel individually, and multi-method research has been gaining traction and popularity since at least the 1990s,¹² the present study offers two methodological contributions. First, time-series cross-section datasets offer new opportunities for nested analysis, facilitating the identification of statistically typical (well-predicted) and atypical (poorly-predicted) observations within a single “panel” or “case”, which then allows for a finer identification of “model-testing” or “model-building” observations (Lieberman 2005) within these cases based on variation on key

¹¹ Thanks to Ken Roberts for suggesting this phrasing.

¹² Gerring and Seawright (2007) and Fearon and Laitin (2008) offer more extended discussions of multi-method research and techniques for integrating quantitative and qualitative research.

independent variables or the dependent variable. In the large-N phase of analysis presented here, for instance, a single case (state) generates multiple observations (“state-years”), and each state-year may be statistically typical or atypical in post-estimation diagnostics. Thus, while conventional approaches to nesting cases emphasize the identification of cross-case typicality, the methods section here (Chapter 3) suggests ways in which nested cases can emphasize both cross-case and within-case variation in typicality, leading to different quantitative strategies for selecting cases (see Lieberman 2005; Gerring and Seawright 2007).

Second, the multi-method approach employed here specifically seeks to neutralize one of the weaknesses of subnational research – the interdependence of observations (Snyder 2001a; see Chapter 3). Snyder notes that the greater unit homogeneity of subnational cases can be a methodological strength, but can also be a weakness in that there is an increased risk of policy diffusion. Snyder understands policy diffusion, or interdependence more generally, as violating a methodological assumption of the independence of observations. This interdependence could be understood as compounding methodological problems associated with case-based research, i.e., “omitted variable bias”, “too many variables, too few cases”, or “degrees of freedom” problems.

Drawing on recent work in qualitative research, specifically process tracing and process-based inferential reasoning, I argue that the weakness identified above is primarily a weakness in large-N, statistical analysis, but is misapplied in qualitative research that employs process tracing (Falleti 2006; Hall 2003). Indeed, just as Bennett (2008, 711) notes that the “degrees of freedom” critique of case-study methods is

“woefully misguided” because of the unspoken assumption of a frequentist logic of inference, I argue that a process-based logic of inference neutralizes the interdependence critique. Specifically, process-based inferences are different from correlation-based inferences, and the approach here draws on the distinction between “causal process observations” and “data set observations” (Brady and Collier 2004) to argue that interdependence or policy diffusion are not special weaknesses of small-N research at the subnational level. By judging observed causal processes against expected, theory-derived causal patterns (Hall 2003), and weighing the probative value of different types of evidence along a causal chain (Van Evera 1997), process-based inferences are quite different from correlation-based inferences, approaching a “folk-Bayesian” logic of inference, i.e., weighing prior beliefs against different types of new data (McKeown 2004, 158; see also Bennett 2008; Goldstone 2003, 44-45). Indeed, small-N, process-based research is especially suited for assessing and evaluating the causal importance of policy diffusion and, if this kind of interdependence is happening, for identifying the mechanisms that make the movement of policy across levels or units of a regime possible.

1.5.2. Empirical Contributions

Empirically, the study offers the first time-series cross-section analysis of state courts in Latin America’s two largest federal systems and democracies – Mexico and Brazil.¹³ Moreover, the analysis draws on two methods – large-N, statistical techniques and small-N, controlled comparisons – as well as multiple streams of evidence. The large-N analysis examines judicial spending – as a proxy for court strength – across the

¹³ Beer (2006) offers an econometric analysis of Mexican state courts, but her analysis is limited to a single year, 2003 (N=31). I am aware of no quantitative analyses of state courts in Brazil of any kind.

26 Brazilian states from 1985 to 2006, and the 31 Mexican states from 1993 to 2007, excluding the federal districts in both countries. The spending data in Brazil was in large part already organized by the Treasury Department (*Ministério da Fazenda*), but systematic spending data in Mexico was unavailable from government sources and had to be collected personally from state reporters in the Legislative Archive at the Institute for Legal Research at the National Autonomous University of Mexico (*Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México*, or UNAM-IIJ), and supplemented by visits to the legislative and judicial archives in individual states. The small-N analysis draws on 115 personal, semi-structured interviews with judges, lawyers, legislators and other legal elites, archival evidence, and direct observation during 22 months of fieldwork between 2006 and 2008. Thus, the data and evidence presented here – spending data, interview data, archival data, and direct observations – contribute new evidence to the study of institutions and judicial politics.

1.5.3. Theoretical Contributions

In terms of theoretical contributions, the study offers a historical institutional account of the ways in which electoral competition and ideology shape judicial change. The theoretical foundations are not novel, but the analysis contributes a finer understanding of preferences – highlighting the role of ideas (see Smith 2008) – and of mechanisms of institutional change (see Thelen 1999). Further, the analysis contributes a better understanding of the conditioning effect of long-term legacies of authoritarianism on ideology, and the conditioning effect of baseline institutional strength on ideology. Finally, the analysis also contributes a better understanding of policy movement across different levels of a regime, across territorial units within a single country, and of the way

simultaneous and ongoing policy processes – local, national, and international – can shape and condition each other. These contributions emphasize the importance of historical institutional accounts in comparative politics, but also contribute to the development of historical institutional approaches to institutional change and to our substantive understanding of the unevenness of democracy within individual countries.

A principal feature of Chapter 2 is a detailed specification of causal logics underpinning electoral competition. Indeed, this specification of causal logics is a meaningful contribution on its own, as it can provide a better understanding of theoretically-anticipated causal patterns than can be judged against observed causal processes. However, the analysis also seeks to adjudicate among these disparate and rival causal logics. In doing so, the analysis contributes to identifying micro-foundations of behavior and mechanisms of institutional change. This component of the research resonates with Thelen's (1999) review of false distinctions between rational-choice institutionalism and historical institutionalism, showing how detailed specifications of causal logics and micro-foundations complement the broader historical institutional approach. Further, the emphasis on causal logics also answers her call for greater attention to causal mechanisms, especially relating to institutional change.¹⁴ Causation need not be directly observable (George and Bennett 2005, 218; Falletti 2006, 10) – and it may be that it is never directly observable (Collier, Seawright, and Munck 2004, 42), so finer and more clearly specified causal arguments and propositions help us test these

¹⁴ Thelen the lack of attention to mechanisms of institutional reproduction in some historical institutional literature, e.g., critical juncture or path-dependence accounts, but that “feedback processes” help fill this theoretical gap (e.g., Pierson 2000; 2004). That is, we know more about mechanisms of institutional continuity than institutional change, though both should be examined together as insights regarding the sources of institutional stability can reveal how these institutions might break down or transform over time (Thelen 1999, 392-400). Thelen's own work (2004) provides insights into mechanisms of institutional “layering” or “conversion” (see also, Orren and Skowronek 1994), but in general, mechanisms of change are undertheorized.

propositions more rigorously and identify underlying mechanisms. The theoretical chapter (Chapter 2) aims for just these kinds of finer theoretical specifications of causal logics – including motivations, mechanisms, and causal order – to improve statements of observable, empirical implications and test these implications against observed processes of reform.

As stated in the summary of the argument, the empirical analysis does not support many of the conventional causal logics underpinning electoral competition. Perhaps most notably, the evidence suggests that one of the logics – Hirschl’s (2004) “policy preservation” variant of the insurance logic, operates differently in new, post-authoritarian democracies than in more advanced polities. In the standard formulation, Hirschl anticipates that neoliberal elites preserve their economic policies within ideologically friendly judiciaries. Gillman’s (2002; 2006; 2008) argument is logically similar, anticipating that current elites seek to preserve their policies within friendly courts. However, in new democracies, current hegemonic elites are likely not liberal democrats, much less neoliberal, as in Hirschl’s account (e.g., “near ideal” case of Israel). Elites in new and transitioning democracies are also likely not elites of different ideological stripes, as in Gillman’s post-Reconstruction Republicans (2002) or post-Great Society Democrats (2006). Rather, elites in new democracies, especially in Latin America and other parts of the developing world, are more likely to be traditional, landed or propertied elites. I argue that these elites do not strengthen courts in order to entrench ideologies in any policy-preserving sense. Instead, these elites often strengthen courts in superficial ways, with continuity masquerading as reform, as in the Mexican state of Hidalgo (see Chapter 6). Unfortunately, “reform” in these instances is only “democratic

window-dressing” or an institutional variant of a “rule of law show” (Hilbink 2007a). Thus, I suggest a different version of the entrenchment logic in new democracies – a patronage-preserving logic. This logic is evident in Hidalgo, but it is most striking in the Brazilian equivalent of Hidalgo – Maranhão (see Chapters 6 and 7).

Moreover, the theoretical framework draws on multiple strands of theory from the study of institutional development and change, including rational-strategic, cultural-ideational, and social movement accounts. Importantly, rational-strategic approaches stress the way external forces such as elections shape institutions. Social movement theory stresses opportunity structures, which are also exogenous forces. However, by suggesting ways in which judges or other institutional actors might organize and mobilize, and their attention to mobilizing techniques and framing, social movement theories stress the important role of ideas and alliances with sympathetic actors that can amplify the movement’s ideas. These features reflect a more endogenous account of institutional change. In contrast to the rationalist emphasis of rational-choice and strategic accounts, this is a more cultural-ideational approach. This study highlights the role of judges “off the bench” or “beyond the bench,” joining other studies that emphasize the role of actors internal to institutions, and the role of ideational dynamics and how judges can shape preferences of external actors, altering the constraints of a strategic terrain (Staton 2006; 2007; forthcoming 2010; Hilbink 2007a; 2007b).

Finally, the focus on causal logics and the emphasis on “mobilizing structures” in social movement theory lead to the identification of ways in which policies regarding the judiciary move across levels of a regime (Snyder 2001b), i.e., from the local to the national, or vice-versa. For instance, the local process of judicial change in Brazil was

shaped in meaningful ways by policy debates and institutional changes at the national level. In some cases, this influence was negative, as in the case of the second judges' strike in the state of Acre in 2003, when what was clearly rational locally did not take place because of the involvement of key judicial leaders in a separate national debate (see Chapter 7). In other cases, the influence is positive, as in the instances in which local, progressive judges in Maranhão have used the national judicial council to draw attention to problems in the state's administration of justice. In this regard, the national council acts as a "federal foothold" for local actors, who are able to effect local change by leveraging the power of a national institution. These patterns of state-center-state or local-national-local policy movement also resonate as domestic versions of policy "boomerangs" (Keck and Sikkink 1998).

In addition to illuminating the movements of policies across levels of a regime, the relationship between the leftist PT and the judiciary also raises the issues of (a) the conditional effect of ideology depending on the baseline strength of target institutions, and (b) the uneven movement of policy across territorial units within a single country. This is also the case with regard to the slow, uneven appearance of judicial councils across the Mexican states, despite the fact the federal council was created in 1994 and began operating in 1995. Finally, the key role of Spanish-trained judges in the Mexican state of Michoacán, the role of neoliberal policies in Aguascalientes, and the movement and role of progressive judicial attitudes across states within Brazil identify ways in which ideas travel subnationally and internationally. These phenomena again highlight the role of ideas (Smith 2008), but also highlight the movements of ideas. In short, the current study helps us understand how policies regarding the judiciary move across

different levels of a regime, across different territorial units within a single country, and across national boundaries.

1.6. Plan of the Dissertation

The dissertation is organized as follows. In Part I, Chapter 2 outlines the theoretical framework, taking special care to identify the causal logics underpinning electoral competition and ideology, and highlighting the roles of actors external and internal to judicial institutions, i.e., politicians and judges. Chapter 3 presents the methods employed in the empirical analysis, highlighting the strengths and weaknesses of quantitative and qualitative techniques, and the particular strengths of integrating both at the subnational level in more than one country. Part II offers the empirical core of the dissertation. After a brief introduction regarding judicial spending, Chapters 4 and 5 present the quantitative analysis in Mexico and Brazil, respectively. Mexico is analyzed first because the results are clear and straightforward, assisting with the interpretation of the more complex landscape of parties and competition in Brazil. Chapters 6 and 7 turn to the qualitative analysis in three Mexican states and three Brazilian states, respectively. Chapter 8 in Part III concludes, summarizing the overall findings and integrating the quantitative and qualitative findings, as well as offering comparative reflections and indications for future research.

Part I. Theory and Methods

2. Theory

Electoral Competition, Ideology, and Court Strength: A Causal Logics Approach

2.1. Introduction: Why Build Strong Courts?

This chapter turns to the theoretical approach used to answer the empirical and theoretical puzzles introduced in Chapter 1. Overall, the approach is historical institutional, emphasizing temporal processes, context and contingency, and the intersection of different historical processes. Within the broad contours of this approach, two main strands of theory inform the analysis. The first focuses on the consequences of increasing electoral competition, highlighting the rational incentives, strategic constraints, and political openings faced by relevant actors in the context of competitive or non-competitive elections. In this regard, this first strand could be considered a brand of rationalism. The second emphasizes the role of ideas, stressing the extent to which – despite external constraints, electoral or otherwise – ideology and other cultural-ideational influences shape behavior. In this regard, this second strand could be considered a brand of culturalism. Electoral competition and ideology, however, do not exert their influences in isolation. Rather, their effect is interactive, and the effect of ideology is conditioned by at least three other overlapping processes: (i) the ideological location of the authoritarian regime, thus shaping the character of both traditional elites and opposition; (ii) the baseline condition of judicial institutions when ideological actors seek reform; and (iii) the nature of alliances for reform, both locally and at other levels of the regime. Moreover, while the most relevant actors can sometimes be politicians, key actors are also often internal to institutions, e.g., judges. Thus, the theoretical framework is attentive to interactions between competition and ideology, to the intersection of

electoral and ideological factors with other historical processes, and to both external (politician-led) and internal (judge-led) explanations, i.e., exogenous versus endogenous explanations of judicial change. Briefly stated, the approach emphasizes the *contingency of intentionality*, that is, the conditional expression of ideological preferences, highlighting the preferences of judges.

A central goal of the theoretical discussion in this chapter is the specification of rival causal logics underpinning theories of the effects of electoral competition and ideology on court strength. Generating these logics accomplishes two things: (i) it emphasizes causal mechanisms and the microfoundations of behavior (the identification of causal mechanisms contributes to an undertheorized area of institutional change and a discussion of microfoundations blurs one of the conventional divisions between rational-choice institutionalism and historical institutionalism (Thelen 1999)); and (ii) it specifies expected causal patterns against which observed causal processes can later be tested. Regarding the latter point, this chapter generates a wide variety of alternative causal logics for judicial reform. While some of these can be tested in the large-N analyses in Chapters 4 and 5, generating these rival logics is especially beneficial for the process-tracing method employed in the small-N analysis in Chapters 6 and 7, where the ability to test a wide variety of theory-derived logics against observed causal patterns enhances the method's analytic strength.

The interplay between the two broad theoretical currents noted above – rationalism and culturalism – might be summarized as strategic interaction marked simply by goals and constraints, i.e., preferences and situations (Epstein and Knight 1998; Katznelson and Weingast 2005). For instance, viewed from the perspective of

politicians (e.g., a Congress-centered approach; see Cameron 2005), the dynamics of electoral competition both drive rational incentives or interests and define constraints, and ideology might reduce to sincere, programmatic preferences adapted to strategic preferences by the constraints imposed by the electoral landscape. That is, constrained preferences have a different effect than unconstrained preferences.

In addition to politicians, however, the theoretical framework seeks to include actors internal to judicial institutions and consider the manner in which judges and other “legal elites” shape institutional change or continuity. In this regard, a compelling theoretical framework should anticipate when we might expect judges to organize, express reform preferences, and successfully influence reform outcomes – what other scholars have referred to as “extrajudicial” conduct or activity (Whittington 1995; Dubeck 2007). That is, what explains the behavior of judges “beyond the bench”? Further, how does this off-bench behavior – lobbying, litigation, labor actions, public speaking, or teaching – shape the preferences of other actors, and perhaps even alter existing constraints?

Social movement theory lends itself to this goal. Specifically, the three analytic pillars of social movement theory – (i) opportunity structures, (ii) mobilizing structures, and (iii) framing (McCadam, McCarthy, and Zald 1996; McCadam, Tarrow, and Tilly 2001) – can help explain judicial mobilization. Indeed, many compelling accounts of legal mobilization build implicitly or explicitly on these pillars of social movement theory (e.g., McCann 1994; Epp 1998; Hilbink 2007b).

To a certain extent, social movement theory and strategic accounts coincide.¹⁵ That is, rationalist incentives of strategic situations or constraints map onto “opportunity structures” and “mobilizing structures”, and ideological preferences and “framing” share similar cultural-ideational qualities. Thus, some analysts might collapse the two and suggest adopting one or the other, or perhaps even integrating the two in a single framework. Others might simplify further and argue that “framing” is simply another kind of constraint, and that actors or certain rhetorical devices can influence an ideational setting to either decrease or increase the chances of success. For instance, Hilbink (2007b) argues that progressive currents within the Spanish church starting in the 1950s generated an ideological context that made later arguments about democratization more palatable in the 1970s, and facilitated the mobilization of politically liberal, reformist judges. That is, ideological changes in a legal culture reduced the constraints for the subsequent mobilization of pro-reform judges. However, while acknowledging that an ideological context can change to facilitate reform, Hilbink’s account asks us to consider how the process of framing can be quite different from strategic constraints. That is, how exactly was the ideological context changed in the first place? In short, how and why did *preferences change*? The issue of preference formation and change highlights the role of ideas in the active, dynamic sense of “framing”, a role that is often neglected in rationalist or even strategic accounts, which often take preferences as given, understanding a passive, static form of framing, i.e., an existing cultural “frame”.

In a similar vein, “mobilizing structures” can act as more than strategic constraints, identifying mechanisms by which ideas diffuse, gain or lose currency or

¹⁵ Andreas Schedler raised this issue at a seminar on “Latin American Judicial Politics” at CIDE, Mexico City, March 5-7, 2009, organized by Gretchen Helmke and Julio Ríos-Figueroa.

traction, and perhaps even effect ideational or preference change themselves. That is, the role of ideas might be conditioned by the particular mobilizing structures or “technologies”¹⁶ on which they travel. Returning to Hilbink’s example of judicial mobilization in Spain, the key factor she identifies in the success of the pro-reform message is the fact that the movement’s ideas were amplified by two such mobilizing technologies: (i) a progressive wing within the Catholic clergy, and (ii) leftist parties. The attention to specifying causal mechanisms that inheres in the conceptualization of mobilizing technologies is absent from conventional strategic accounts. Thus, social movement theory captures the interactive dynamic between relevant actors, goals, and constraints (see Epstein and Knight 1998), while also adding greater attention to rhetorical devices and the role of ideas, as well as causal mechanisms that transport these ideas. Ultimately, the emphasis on both ideas and causal mechanisms can shed light on preference change, which is a critical but understudied and undertheorized area in comparative politics and public law/judicial politics.¹⁷

To summarize, drawing on rationalist, strategic, and social movement accounts, I highlight the role of ideology and electoral constraints, and contextualize these two factors in the legacies of authoritarianism, the baseline condition of the judiciary, and the nature of alliances for reform. External actors (politicians) and internal actors (judges) are both relevant for the reform process. Both types of actors respond to their ideological

¹⁶ I use the phrases “mobilizing structures” and “mobilizing technologies” interchangeably. However, where possible, I give preference to “technologies” in order to avoid confusion with “opportunity structures” and with broader structural argument, i.e., theoretical propositions in which macro-economic or macro-social factors are key explanatory variables.

¹⁷ A better understanding of preference formation and preference change can also suggest lessons for understanding cultural change, a difficult topic in the social sciences and the Achilles heel of explanatory arguments in the political culture tradition, which tend to inspire the question, “if ‘bad culture’ is the source of a problem, how do we change to ‘good culture’?” Cultural change, in turn, suggests theoretical links to other sub-fields of political science, including constructivist approaches in international relations.

preferences and to incentives from the electoral landscape. Finally, the approach expects that the two types of actors interact in ways that can change each other's preferences, and the effect of ideology is further conditioned by three other overlapping processes.

Aside from drawing on the complementary strengths of different theoretical approaches, the framework presented here highlights underlying causal logics associated with electoral competition that can be tested in the empirical analysis. Much of the literature on electoral competition anticipates competition to have positive consequences, but I identify four separate causal logics underpinning this expectation, plus distinct sub-logics in the case of one of these logics. Notably, the causal logics can be complementary, inconsistent, or even contradictory. Moreover, in post-authoritarian regimes, competition causes the the political landscape to transition from being largely dominated by a single actor to multi-party competition. In this context, veto-player theory anticipates that competition increases the number of relevant actors (veto points), thus generating conditions for less policy change, not more. That is, competition could have a negative effect on judicial change. Thus, a central aim of the empirical analysis is to identify when causal logics are complementary and, if inconsistent or contradictory, adjudicate among competing logics. The small-N, process-based analysis is especially suited to this task (Hall 2003). Finally, each causal logic raises issues that make it either more or less relevant in newer and poorer democracies.

In sum, the theoretical framework builds on a mix of rationalist, strategic, and social movement accounts to anticipate exogenous, endogenous, and hybrid explanations of institutional change. Following Hall (2003) and Falleti (2006), one of the principal goals of the theoretical framework presented here is to use theory to derive explicit,

finely stated causal patterns. These patterns serve to establish key actors and events, mechanisms and motivations, as well as causal sequences and timing. Notably, the theoretical framework generates both general and specific testable propositions (see Van Evera, 36). The large-N analysis in Chapters 4 and 5 is limited to testing broad, average effects of electoral competition and the ideology of politicians. In contrast, the small-N analysis in Chapters 6 and 7 develops a much finer analysis of the interaction between the electoral landscape, politicians, and judges. In this latter analysis, the process-based approach evaluates the observed causal processes against the expected causal patterns.

2.2. Electoral Competition and Court Strength

Existing research generally anticipates electoral competition has positive effects. This is especially the case in post-authoritarian settings, where research indicates increasing electoral competition and pluralism yield positive, liberalizing policy change. However, multiple and potentially competing causal logics underpin this general expectation, including logics that focus alternately on actors external to institutions (e.g., politicians) and actors internal to institutions (e.g., judges). Moreover, these findings on the positive effects of competition overlook veto-player theory, which yields contradictory expectations. That is, electoral competition increases the number of veto points, inhibiting the possibility of new, reformist policies. Thus, rival and even contradictory causal logics lie behind theoretical expectations related to electoral competition. The following sections identify these causal logics in order to make them more explicit, generating finer specifications of causation and more precise empirical

implications, thereby facilitating tests of the theories in the empirical analysis (Hall 2003).

2.2.1 Positive Consequences of Electoral Competition

Existing political-institutional research shows electoral competition exerts upward pressures on the performance of public institutions. Studies in Latin America find competition improves legislative performance and institutionalization (Beer 2003; Solt 2004), fiscal policy and performance (Boyce 2005; Flamand 2006), and educational spending (Hecock 2006). Competition also translates into more protections for human rights (Beer and Mitchell 2004).¹⁸

Scholars of judicial politics find a similarly positive relationship between electoral competition and court strength. For instance, the anticipation of party turnover generates incentives for judicial independence in the form of “strategic defection” at the end of outgoing administrations (Helmke 2002; 2005). The expectation of electoral defeat also generates incentives for current majorities to strengthen the judiciary as a prophylactic measure, or “insurance policy”, for themselves as future minorities, a result found in Asian countries (Ginsburg 2003) and Latin America (Finkel 2005; 2008). Moreover, divided government – an alternative measure of competitiveness – enhances judicial independence in Argentina and Mexico (Iaryczower, Spiller, and Tommasi 2002; Chavez 2004; Ríos-Figueroa 2006), and, in another example from Mexico, generates incentives for judges to promote case results strategically to expand court influence (Staton 2006). Finally, smaller margins of victory translate into stronger judicial budgets in the Mexican

¹⁸ Cleary (2007) finds no relationship between electoral competition and the responsiveness of municipal governments in Mexico, measured as the provision of public utilities (potable water and sewerage) and the generation of local revenue. However, Cleary also includes a long bibliography of findings regarding the positive effects of electoral competition, including Coppedge (1993), Rodriguez (1998), Mizrahi (1999), Aziz Nassif (2000), and Langston (2003).

states (Beer 2006). Thus, existing research anticipates that competition has positive effects on court strength.

However, disparate causal logics undergird this expectation. Four main causal logics underpin the electoral explanations of institutional and judicial change cited above: (1) re-election, (2) signaling, (3) insurance, and (4) opportunity. Each logic is detailed below, identifying sub-logics within each where necessary in order to gain analytic precision.

2.2.1.1. Re-election Logic

First, the “re-election logic” anticipates that inter-party competition generates incentives to be more responsive to the electorate’s demands for functioning institutions, better performance, and smoother delivery of public goods, including accessible, efficient, and independent courts. In short, electoral competitiveness has a “lasting effect by forcing all parties in government to perform better if they aspire to win the next election” (Rodriguez 1998, 164; see also Cleary 2007, 284).

As noted by Cleary (2007), the re-election logic requires clarification in Mexico, which I also extend to Brazil. In Mexico, there is a long-standing prohibition against re-election. This prohibition also existed in Brazil until a 1997 reform that permitted two consecutive terms and additional, non-consecutive terms. However, re-election is not the only reason incumbents at the level of governor seek successful policies. Candidates also do so to build good reputations as politicians because they want to run for higher office. Furthermore, parties place a premium on successful policies in order to stay in power, and unsuccessful politicians are unlikely to be rewarded with future party candidacies and support. These incentives are reflected in the political cliques or “camarillas” in Mexico

(Ai Camp 2002; 2007, 122-123; Mizrahi 2003, 16), which find their equivalent in the political “grupos” of Brazil.

In Brazil, a significant debate divides scholarship on the importance of political parties. One strand of scholarship highlights low party identification and discipline (Lamounier and Meneguello 1986; Lima Jr. 1993; Mainwaring and Scully 1995; Ames 2001), so some analysts might argue that the party reputation argument is weaker in Brazil. However, much of the evidence for this strand of party research comes from the 1980s and early 1990s – the first years of the new experience with democracy. More recent research, which includes both Brazilian scholars and Brazilianists abroad that were previously critical of the apparently weak, fragmented, or “non-ideological” nature of the party system in Brazil, now finds strong party identification (Kinzo 1993; Limongi and Figueiredo 1995; Meneguello 1998; Figueiredo and Limongi 1999; Mainwaring, Meneguello, and Power 2000). In Mexico, individual career ambitions are tied closely to one’s political party, party identification is strong, and party rhetoric often infuses discussions of policy authorship and development, particularly since the controversial 1988 election that forged the PRD (see Hecock 2006; Cleary 2007), and since the PAN began winning municipal and state elections in 1989. Thus, I anticipate incumbents in both Brazil and Mexico to respond to electoral incentives for positive policy performance in much the same way the U.S. literature expects incumbents to respond to these incentives. We should observe “best policies” towards the judiciary as part of strategies geared towards electoral success. In terms of sequence and timing, we should observe the development of these policies, especially in public statements, prior to elections.¹⁹

¹⁹ The extent to which the electorate cares about the administration of justice should condition the real effect of the re-election logic. Many campaign speeches regarding the justice system in Latin America

2.2.1.2. Signaling Logic

Second, following studies of “credible commitments” (e.g., Elster 2000), Ginsburg (2003) alerts us to the possibility of a “signaling logic.” Many constitutional changes require a legislative supermajority. Where electoral configurations are shifting, actors belonging to a slight political majority may need the support of the minority, or at least a portion of the minority, in order to reach this supermajority (usually two-thirds of the legislative votes). Political majorities may favor constitutional changes that strengthen courts in order to provide the opposition with a “credible commitment” (Ginsburg, 28) that the majority will, after the constitutional transition, respect the minority. Even in ordinary legislative changes of a non-constitutional nature, simple majorities are still required. Dominant groups that represent a plurality of legislative votes may need the support of a minority, or at least one minority block, to support their policies. This is a distinct causal mechanism underpinning the positive relationship between electoral competitiveness and institutional change. We should observe majorities who expect to stay in power using reform efforts as strategies to gain the support or confidence of political minorities.

2.2.1.3. Insurance Logic

Third, the “insurance logic” also motivates theoretical expectations. This logic anticipates that competitive elections create political uncertainty, and that this uncertainty generates incentives for insurance. Stated otherwise, “[a]s democratization increases electoral uncertainty, demand for insurance rises” (Ginsburg 2003, 33). However, at least

highlight the need to fight crime and improve public safety. However, the opacity and unresponsiveness of the judiciary are also frequent themes. Thus, I expect that the electorate does indeed care about the administration of justice, and that, if the re-election logic is relevant to judicial reform, we should observe politicians highlight reform initiatives as described above.

three different types of causal accounts either explicitly use the label “insurance” or can easily be associated with this label, so this logic needs to be unpacked into three separate sub-logics. Each of the sub-logics conceptualizes a distinct response to uncertainty. Moreover, all three different accounts are prominent in studies of judicial politics and public law, though rarely explicitly acknowledged as different logics, which adds to the risk of theoretical confusion.²⁰ Thus, as argued below, clarity requires that this logic be itself divided into three distinct sub-logics. The three logics are arranged chronologically, roughly in order of appearance in the literature.

The first insurance sub-logic builds on theoretical insights from Landes and Posner (1975). In their seminal piece, the authors argued that strong, independent courts enhance the lifespan of legislation. That is, legislation created in the present will likely last longer if protected by an autonomous judiciary than if left unprotected, either because of an institutionally weak or politically vulnerable judiciary. As the longevity of legislation increases, the political prestige and importance of the legislature also increases – since this is the institution where lasting law will be made – raising the demand for legislation and drawing the attention of interest groups, lobbyists, and other politicians. Thus, in this economic formulation, positive judicial reforms indirectly raise the value of the legislative process. Plainly stated, strong courts raise the price at which legislators can sell the lawmaking process. It is in the legislature’s own interest to build the judiciary in order to enhance its own institutional value by creating demand for durable legislation. In short, legislators strengthen courts to profit indirectly from insuring their own laws, which are made in the present, against being changed easily in the future.

²⁰ See, e.g., Landes and Posner (1975), Ginsburg (2003), Hirschl (2004), Finkel (2005; 2008), Shambayati (2008), and Serigil (2009).

In terms of a theory-guided causal pattern, legislators are the key actors in this sub-logic. Thus, we should observe legislators as the initiators or activators of reform, and the timing of reform efforts should begin early in legislative terms so that legislators can receive the full benefit of “selling” their legislation. The application of this logic to new democracies, however, is in doubt, considering that it requires, at a minimum, a functioning, competent, and relevant legislature, as well as a high level of coordination and strategic sophistication among legislators. Further, the logic assumes the institutional strengthening of the legislature relative to the executive (governor). It is unclear that these conditions could readily be met in many local legislatures in either Mexico or Brazil, or that governors would easily tolerate the rise of legislative power at the expense of their own power.

A second insurance sub-logic follows Ginsburg (2003) and Finkel (2005; 2008).²¹ In autocratic or single-party dominant environments that are transitioning to greater electoral competition, strengthening the judiciary operates as a kind of safeguard – *current majorities* accept the short-term costs of strengthening the judicial branch in order to gain the long-term benefit of judicial protection as *future minorities* (Finkel 2005).²² For instance, Ginsburg argues that, in Korea’s transition from authoritarianism in 1987, the combination of (i) new, direct elections for president and (ii) three parties of roughly equal strength led each party to expect a one-in-three chance of winning the

²¹ Whittington’s (2007) “oppositional leader”, who strengthens court in self-protective way, might also be characterized as following this sub-logic, since the court-strengthening is carried out for self-protective reasons.

²² In this regard, this sub-logic parallels the underlying logic of “veil rules” in the process of writing new constitutions. Drawing on John Rawls’s theory of justice and his central concept of a “veil of ignorance, veil rules require introducing some degree of uncertainty about the exact configuration of future power and interests, i.e., at the time the constitution takes effect, in order to maximize the writers’ present attentiveness to a broader range of interests (Widner 2007, 1517; Vermeule 2001). For instance, elections may be postponed until after the constitution writing process, or a constitution may not be scheduled to take effect until after a certain period has elapsed, during which elections will take place (Widner, 1518).

election. Stated in the opposite, each party believed there was a real possibility they would *not win*, generating incentives to create a constitutional court that could protect them from the ultimate victor (Ginsburg, 215-216). Similarly, Finkel argues that the erosion of the PRI's decades-long rule in Mexico caused the party to be insecure regarding its electoral future, creating the rational incentives to strengthen the judiciary as a way of protecting itself from current opposition parties that might govern in the future (Finkel 2008, 102-105).²³

In short, current elites – particularly long-standing, authoritarian elites – strengthen courts to protect themselves from hostile policies, persecution, or even retribution once they are no longer in power. Regardless of the character of current majorities, the logic suggests a scenario in which the majorities sincerely believe they will likely lose power and so they make a meaningful effort to strengthen courts. Thus, we should observe (i) sincere private beliefs that power will likely be transferred, (ii) serious reform efforts, (iii) the temporal proximity of these reform efforts to the perceived point at which power would be transferred, (iv) a real increase in the strength of courts, and (v) this increase should occur prior to the transfer of power.

A third insurance sub-logic follows Gillman (1993; 2002; 2008) and Hirschl (2004). Gillman chronicles the entrenchment of U.S. political elites within the non-majoritarian judiciary when electoral outcomes are uncertain in order to protect the policies of these elites. Similarly, Hirschl argues that the global phenomenon of

²³ Notably, Finkel herself notes that the PRI in 1995 no longer controlled a supermajority of votes in the lower chamber of congress. Thus, it needed the help of the PAN in order to change the constitution. The PAN, however, wanted a stronger reform, so the PRI was forced into approving a stronger positive change. In short, ideology also played a significant role, i.e., “The combination of an insecure ruling party seeking insurance and an opposition party pushing for greater judicial empowerment determined the final judicial reform package” (Finkel 2008, 102). Also, it is important that the PRI turned to the PAN for help, not the PRD, with which it had much tenser and hostile relations following the 1988 elections and the renewal of “dirty wars” in many states where the FDN/PRD was strong, e.g., Michoacán (Interview 38; 76).

“juristocracy” – constitutional revolutions that enhance the powers of the judiciary, tending towards judicial supremacy – has been crucially shaped by elites seeking to insulate their policies against rising opposition. Critically, it only makes sense to seek this kind of policy insulation if the judiciary itself is ideologically sympathetic. This sympathy may exist *ex ante* if the current majority and the courts share the same ideology, e.g., if traditional elites dominate both the political branches and the judiciary, or it may be created by the current majority by placing its own members within the ranks of the judiciary. Classic examples of the entrenchment of political projects in the judiciary draw from the early and more recent history of the U.S. Upon losing the election to Jefferson, rather than strengthen the courts in order to “sell” legislation at a higher price or protect their own rights and liberties, the Federalists “retired into the judiciary,” seeking to preserve their policies from the vagaries of majoritarian politics from the vantage of these non-majoritarian trenches (see, e.g., Whittington 2007, 94-95). More recently, the Republican project of placing conservatives in the federal judiciary, beginning with the Reagan administration, can be seen through the lens of this kind of policy preservation.

Regarding the ideological character of key actors, Gillman’s elites are “partisan coalitions” of different stripes – late 19th century Republicans (2002) and late 20th century Democrats (2006) – who strengthen the judiciary when it is friendly, sympathetic or affiliated in order to insulate policies from change.²⁴ Hirschl’s elites are secular and

²⁴ The role of ideological affinity in this sub-logic resonates with Whittington’s (2007) “affiliated leaders” and “affiliated courts”, though his affiliations refer not simply to ideology but to a broader set of policies and interests (what he calls “regime”). His “oppositional leader” also resonates in part with the electoral uncertainty of the insurance logics, though only the “pre-emptive” variant of oppositional leaders. As noted by Whittington, oppositional leaders – those opposed to the status quo or existing regime – might arrive in office with a strong mandate. In such a case, oppositional leaders might be transformative, or “reconstructive”. Conversely, if they arrive with weak supports or a weak mandate, they would be the pre-

neoliberal political, economic, and judicial elites, leading to characterizations of some constitutional revolutions as “neoliberal revolutions”. Indeed, Hirschl’s “near-ideal” case is Israel, where he argues the Basic Laws of 1992 that strengthened the judiciary were the consequence of a dominant, European (Ashkenazi), secular, neoliberal alliance that was threatened by changing electoral configurations, i.e., facing a potential electoral defeat, and sought to protect or entrench its policies within a non-majoritarian institution – the judiciary. For these reasons, Hirschl labels his thesis “hegemonic preservation”.²⁵

Regardless of the ideological character of dominant elites, both Gillman and Hirschl anticipate that, when threatened electorally, elites that are presently dominant will burrow or entrench within the judiciary, strengthening the institution in the process, in order to preserve their policies from alteration by the majoritarian, political branches.

Turning to the expected causal pattern of this third sub-logic, we should observe growing electoral competition accompanied by efforts to strengthen courts. The strengthening of courts should occur *prior to but in close proximity* to the perceived transfer of power. However, unlike the “profit-maximizing” insurance sub-logic, additional politicians – not just legislators – should face pro-reform incentives, as long as they belong to current majorities or governing coalitions. Also, unlike the first two sub-

emptive kind of oppositional leader. In either case, Whittington’s typology reflects the interaction between electoral constraints and ideology identified in Gillman and Hirschl. This interaction is closest to the general insurance thesis in the “pre-emptive” oppositional leader. Notably, the “reconstructive leader” is not responding to insurance incentives, but to exactly the opposite – the incentives for bold or transformative action that political capital or a solid victory can provide. Over time, we might expect to see this kind of dynamic in new democracies, i.e., situations where former ideological minorities win a resounding victory and carry that mandate into a reconstructive administration. However, this is unlikely in nascent democracies, especially following pacted transitions.

²⁵ Shambayati (2008) and Serigil (2009) offer similar accounts of hegemonic preservation in action in Turkey, though I expect Shambayati would likely object to characterizing his account in this way since the military is not explicitly ideological. Nonetheless, the military does have policy preferences and empowered the judiciary in an effort to preserve these policies against the opposition of majoritarian institutions. Indeed, I would argue the open and public nature of Turkey’s “divided sovereignty” (Shambayati, 287-289) is a striking example of hegemonic preservation.

logics, the motive should be to prevent policy change for the sake of maintaining the policy itself, rather than for the sake of generating demand for legislation or providing self-protection in the future. In this regard, the ideological content of policies and the ideological preferences of key actors matters more than in either of the other two sub-logics. Indeed, with regard to the first, profit-seeking logic, Landes and Posner assume the ideological neutrality of courts.²⁶ In contrast to the second, self-protective sub-logic, where current majorities are willing to accept the short-term costs of strengthening the judiciary in order to gain the long-term benefits of judicial protection, this third, policy-preserving sub-logic anticipates that current majorities are unwilling to accept the short-term costs of strengthening an ideologically unaffiliated or unsympathetic judiciary. Stated otherwise, current majorities are unwilling to accept *any* short-term costs at all that are associated with policy change. That is the point of entrenching the policies. However, the corollary of refusing short-term costs is the prospect of having to accept the long-term costs of policy reversal in perhaps a much harsher form, once new majorities confront the efforts to hide policies from majoritarian processes. In this regard, this sub-logic is short-sighted, privileging shorter time horizons over longer ones, and risking potentially high long-term costs. Hirschl (74) acknowledges this risk, noting that “short-term political relief [may lead] to a gradual politicization of the law, thus unintentionally planting the seeds for a long-term erosion of both the judiciary’s legitimacy and the ruling elite’s future institutional maneuvering room.”

A crucial question related to this policy preservation sub-logic is whether any strengthening or empowerment of courts is actually taking place. In each case of

²⁶ Landes and Posner (894-895) explicitly state that they assume judges and courts to be ideologically neutral (“...the judicial attitude implied by our analysis is one of *indifference to the ethical content* of the legislative or constitutional provision that the court is being asked to enforce”) (emphasis added).

“preservation-insurance”, from Hirschl’s Canada or Israel to Shambayati’s Turkey, scholars describe an ideological elite essentially capturing the adjudicatory institutions in order to perpetuate the elites’ preferred policies. Reasonable concerns might be raised whether these kinds of courts are “strong” in any real sense that is consistent with normative democratic practice, or whether they are simply (and highly) politicized.²⁷ The basic point, however, is that courts – as institutions – become more powerful; they enjoy greater resources, jurisdiction, and influence. From a normative perspective, they may not necessarily be more liberal, democratic, or even fair, although this can happen. But in a descriptive and very real sense, courts do become more powerful.

As outlined above, the insurance perspective generally anticipates that electoral competition creates uncertainty, but the central actors and the underlying motives for strengthening courts are different across three distinct sub-logics. In Landes and Posner, legislators are the protagonists and the central plot of their account is economic in nature: lawmakers strengthen courts in order to generate demand for legislation and raise the price of making law, which indirectly strengthens the legislators’ position by allowing them to sell laws at a higher profit – political attention, relevance, and prestige. In Ginsburg and Finkel, the protagonists are politicians (executives or legislators) in the current majority, and the central plot is that these elites strengthen courts in order to protect their own individual rights and liberties once they become political minorities. Notably, the elites in both Ginsburg and Finkel’s specific accounts are long-standing, authoritarian elites facing not only the transfer of power but also the transition to

²⁷ Indeed, Shambayati’s description of the repression and persecution carried out by the judiciary in both Turkey and Iran (296-298, 301-302) emphasizes the extent to which courts that preserve hegemonies (à la Hirschl) may be the very definition of a “weak judiciary”. Granted, these countries are what Shambayati calls “semi-democracies”, but the logic of the argument, and the notion of “court strength” or “judicial power”, does not depend on regime type.

democracy. In contrast to both of these accounts, Gillman's and Hirschl's protagonists are a wide array of political, economic, and judicial elites – Gillman's partisan coalitions and Hirschl's neoliberal alliances – that strengthen courts neither to enhance their own institutional profit or prestige nor to protect themselves from future majorities, but rather to shield, insulate, prolong, preserve, or perpetuate their policies. Importantly, Hirschl's elites strengthen courts *only* because the judiciary is ideologically sympathetic to these policies, and his elites, in contrast to Gillman, are also long-standing, dominant elites, though not necessarily authoritarian elites facing democratization.

The insurance logic in general requires clarification at the subnational level. Each of the sub-logics assumes that the court in question has the capacity to protect legislation from change, protect future minorities from abuse, or preserve policies in general from change. This assumption is strongest when the court of reference is a national supreme court or other high court relying on the formal constitutional constraints these courts can impose on policymaking in order to explain, in the three different forms articulated by the sub-logics, why politicians build strong courts as insurance. At first glance, this assumption may seem weaker at the subnational level. For instance, in Finkel's work on Mexico, the 1994 federal reform that enhanced methods for challenging the constitutionality of state action in Mexico can be interpreted as generating the kind of safeguards anticipated by the insurance logic (Finkel 2005). However, jurisdiction over these mechanisms is purely federal. Thus, some observers may doubt whether state courts have similar constraining power, and therefore question whether we should expect to see

the insurance logic at the local level.²⁸

The potential criticism, therefore, is one of jurisdiction; do state courts have the same kind of jurisdiction that would enable them to protect legislation, minorities, and policies? This question echoes Snyder’s cautionary note (2001b) about moving theoretically from one level of a regime to another. Specifically, “when making cross-level inferences, the researcher must be careful to choose lower-level units that are appropriate for replicating the hypothesis under consideration. That is, the lower-level units should be ones in which ‘the process entailed by the hypothesis can take place’” (Snyder 2001b, 95; citing King, Keohane, and Verba 1994, 221). Plainly stated, should the insurance logic(s) operate at the state level in Mexico and Brazil?

The short answer is “yes”. First, taking the question on its own terms, the criticism is about jurisdictional authority in one area of the law – constitutional law. That is, do state courts have the formal legal power to hear the kinds of cases that would constrain the political branches? In Mexico, the primary mechanism of judicial review or constitutional control is the writ of *amparo*, though the 1994 reform generated additional mechanisms (see Finkel 2005; 2008; Ríos-Figueroa 2007; Magaloni 2008). Federal courts have jurisdiction over *amparo* litigation, so it would appear that Mexican state courts do not have the jurisdictional power or authority raised by the criticism. Brazilian courts do have this jurisdiction, primarily in the form of direct actions of unconstitutionality (*ação direta de inconstitucionalidade*, or ADI). Indeed, the analysis in Brazil in Chapter 7 draws in part from several of these cases litigated at the state level. Thus, on formal jurisdictional grounds, the insurance logic appears to operate in the

²⁸ Thanks to Jeff Staton for helping me think about how the conceptualization of court strength links to existing theoretical models. For their insights on this issue, I am also grateful to Alejandra Ríos-Cázares, Julio Ríos-Figueroa, and Andreas Schedler.

Brazilian states but appears not to operate in the Mexican states. However, this formal jurisdictional objection to applying the insurance logic subnationally oversimplifies the constraints on state action generated by strong courts. Interview evidence notes administrative courts in the Mexican states perform a judicial review function that is conceptually indistinct from constitutional actions at the federal level. Indeed, administrative law may well be a far more meaningful arena of constraining activities given that this is the area of the law where most executive agency actions are challenged. The executive branch is not challenged directly, i.e., the litigation does not necessarily name the governor, but the litigation challenges executive policies in actions via administrative agencies. Further, state supreme courts also have criminal and civil jurisdiction over local officials, including the governor, and local courts also have jurisdiction over most criminal, civil, and commercial litigation. For instance, complaints against public officials generated by local fiscal auditing agencies (*Entidad de Fiscalización Superior*) are adjudicated by local courts (Ríos-Cázares and Cejudo 2009).

Effective courts also limit the corruption and violence that often accompany transitions from single-party regimes, problems that we expect to see in traditional, PRI-dominated states. It should be noted that the baseline condition in the Mexican states is PRI hegemony. In this context, most public institutions are dysfunctional, allowing the local administration to govern unchecked in a highly corporatist and clientelist fashion, and managing the judiciary as a source of patronage. While there is increasing variation among local PRI administrations, any movement away from PRI hegemony and towards a more plural, functional institutional life constrains local executives. Thus, a strong local judiciary can provide checks in formal administrative, civil, or criminal settings outlined

above, but a strong local judiciary can also constrain the executive via informal channels, including public statements and media attention that shape public opinion. The “extrajudicial” activity mentioned in Chapter 1 as activities “beyond the bench” – lobbying, litigation, labor actions, public speaking, and teaching – are examples of this. These formal and informal constraints generate the same kind of insurance incentives locally that purist, jurisdiction-based formulations of the insurance logic should expect federally. Indeed, I would argue that the additional mechanics of constraint outlined in this paragraph – including administrative, criminal, and civil litigation, as well as informal roles the judiciary can play, especially as a participant in public debates and the media (e.g., Staton 2006; forthcoming 2010) – should be considered in other studies employing the insurance approach.

2.2.1.4. Opportunity Logic

Quite apart from the politician-centered logics identified above, electoral competition can also create political openings for other actors to assert themselves. The “opportunity logic” captures this causal dynamic. Social movement theory anticipates that three factors enhance the capacity for effective mobilization: (i) opportunity structures, (ii) mobilizing structures, and (iii) framing (McAdam, McCarthy, and Zald 1996; McAdam, Tarrow, and Tilly 2001). The first of these factors – opportunity structures – refers to macro-level changes in the economic, social, or political landscape at the domestic or international level that generate openings for mobilization. For instance, the gradual opening of the military regime in Brazil is often cited as a reason for the increasing success of social movements (Keck 1995; Keck and Sikkink 1998).

Following social movement theory, electoral competition can alter existing

“opportunity structures”, generating the political space that enhances the possibility of reformist initiatives by other actors. That is, electoral competition may be shaping the incentives of politician-led reform (i.e., incumbents, as noted by the previous logics), but it may also be shaping the incentives for other actors (i.e., opposition) to organize and mobilize reformist agendas. Specifically, judges and other actors internal to the judiciary may see in a competitive electoral context a political opening in which to assert their own reformist agenda. In this regard, the “opportunity logic” derived from social movement theory seeks to explain institutional reform in a manner similar to the way spatial theories seek to explain the behavioral independence of judges in adjudicatory settings (e.g., Epstein and Knight 1998). Thus, this logic offers an explanation of judicial behavior “off the bench” that complements existing theories of decision-making “on the bench”. For example, where a broad policy space generated by electoral competition or divided government might encourage judicial independence on the bench, the same competition or divided government might encourage reform-oriented judicial lobbying off the bench. This framework sees judges not as apolitical, but as political actors vital to the process of institutional continuity or change.

Hilbink’s explanations of judicial conservatism in Chile (2007a) and the contrasting judicial progressivism in Spain (2007b) are emblematic of this approach. Her account of the progressive judges’ movement in Spain in the 1970s is an example of precisely this kind of phenomenon. In that case, several structural changes – Franco’s alliance with Catholic rather than openly autocratic segments beginning in the 1950s, ideological shifts associated with progressive and technocratic wings of Catholicism, pressures to integrate with the European Economic Community, and the decrease in

repressive tactics – “softened” the Franco regime, allowing reformist judges greater opportunities for movement and expression (Hilbink 2007b, 418, 426). Electoral competition, especially in early post-authoritarian phases, can provide similar openings, yielding broader political spaces in which groups can mobilize.

As stated above, social movement theory is not just about opportunity structures – it is also about “[re]framing” issues and mobilizing “technologies.” Scholars of the legal complex refer to the latter as “structural supports” for mobilization, i.e., existing organizations that can help articulate social movements and therefore enhance the capacity for mobilization (McCann 1994; Epp 1998; Halliday et al. 2007). For instance, Epp’s (1998) explanation of “rights revolutions” in four countries hinges on the presence and strength of “*support structures* for legal mobilization” (emphasis added). Indeed, Hilbink’s work on Spanish judges emphasizes that the structural changes outlined in the previous paragraph – the softening of the Franco regime – were not sufficient explanations of the success of reformist judges. Rather, two other factors were also critical. First, the framing of legality in terms of fundamental principles versus positive law – rights versus law, or *derecho* versus *ley* – was critical, questioning the legitimacy preferred laws, and this was mostly a progressive intellectual current that increasingly gained traction in Spain from the 1950s forward (Hilbink 2007b, 419-422).²⁹ Second, and more importantly, the ability of reformist judges to articulate their efforts through two existing organizations – (1) leftist political parties and (2) the progressive wing of the clergy – was vital to the judges’ success (423-426). In fact, Hilbink highlights these last two technologies – leftist parties and a progressive clergy – as the most important in the

²⁹ See Engelmann (2004; 2007) for discussion of similar movement in southern Brazil during 1980s, called “*direito alternativo*”.

successful mobilization of Spanish judges.

In terms of causal patterns, Hilbink highlights three factors that might be important to look for in the qualitative analysis – political openings, ideological (re)framing, and mobilizing technologies. Specifically, where nascent reform movements are present, openings generated by electoral competition should trigger broader mobilization, cultural-ideational forces can create a context that is politically friendly to these movements, and existing networks or organizations can facilitate mobilization by operating as the technological transports for the movement's ideas.

2.2.2 Negative Consequences of Electoral Competition

In contrast to the positive effects of electoral competition anticipated by the causal logics identified above, veto player theory predicts that competition hinders policy change by increasing the number of veto players, thereby inhibiting reform (Tsebelis 2002). Stated otherwise, electoral competition should produce less policy change, not more. Reform should be easiest in single-veto-player environments, and more difficult in multi-veto-player contexts, as would occur in competitive environments characterized by narrow legislative majorities – falling short of the simple majorities required for normal legislation or supermajorities required for constitutional changes – or divided government with executive and legislative powers in the hands of competing parties.

The extent to which veto points condition the success of policy change suggests a way in which veto player theory provides analytic leverage for evaluating the explanatory role of ideology. Ideology is discussed in greater detail below, but with regard to veto players, the expression of an ideological commitment should be easier in single-veto-player environment *if* the dominant veto player holds said commitments. For instance, if

a governor is committed to a particular policy, and the governor also controls a supermajority of the legislature, then the probability of that policy's success is high. Conversely, if a policy is not successful in such a single-veto-player environment, we can reasonably infer that the dominant actor was not committed to the policy in question. I return to a fuller discussion of ideology and the interaction with electoral competition later.

Table 2.1 summarizes the theory-derived, causal logics underlying the anticipated positive and negative effects of competition. The first column lists each logic or sub-logic individually, followed, from left to right, by the logic's expected causal pattern, key actors, and their principal motive.

Table 2.1. Causal Logics Underpinning Electoral Competition.

Logic	Key Actors	Motive	Expected Causal Pattern
Re-election	Politicians	Political office	Competition causes <i>all parties to strengthen courts</i> in order to remain in office or advance in their careers
Signaling	Politicians	Governability	Competition causes <i>parties that expect to win or stay in power</i> to strengthen courts in order to gain support of current minorities
Insurance 1	Legislators	Profit maximization	Legislators strengthen courts in order to protect their policies from arbitrary reversal in the future, thereby increasing the price of current policy formation (e.g., present legislative acts)
Insurance 2	Politicians	Self-protection	Current majorities that expect to lose an upcoming election to strengthen courts in order to provide future protection for themselves from abuses of current minorities who will be the future majorities
Insurance 3	Politicians and sympathetic economic and judicial elites*	Policy preservation	Politicians strengthen courts as a means of preserving, perpetuating, or entrenching their preferred policies
Opportunity	Judges and other legal elites	depends on ideology or interests of mobilization	Electoral competition generates an “opening” of political regimes that facilitates legal or judicial mobilization.
Veto Player	Politicians	Credit for policy success, or own policy or interests, i.e., re-election logic or ideology	Competition increases the number of veto players, inhibiting reform
Patronage Preservation	Politicians and allied elites	Maintain sources of power (patronage and clientelism)	Electoral competition, or signs of future competition, causes traditional elites to tighten control of institutions; real change is weak or superficial

* Gillman (2002; 2008) calls these “partisan coalitions”, though Hirschl (2004, 50) suggests politicians are “most active”.

The empirical analysis in Chapters 4-7 seeks to examine each of these causal forces underlying electoral competition. The large-N analysis is able to test the broad association between electoral competition and judicial strength, but its ability to discern between the causal logics identified here is reduced. The large-N analysis is also hampered in its ability to discern to what extent electoral competition activated actors other than politicians in the manner anticipated by social movement theory. However, the qualitative, small-N analysis is well-suited for this task. Thus, a principal goal of the small-N studies is to adjudicate among rival or contradictory logics, or assess to what extent more than one logic may be operating at the same time. Beyond this adjudicatory role, however, the small-N analysis also highlights the role of judges and other legal elites, and can also assess to what extent other causal factors, namely opportunity structures, framing, and mobilizing structures, are also exerting a meaningful effect in causing judges to act on reformist impulses. For instance, in Brazil, reframing has a clear analog in the “alternative law” movement (*direito alternativo*) that had its epicenter in Rio Grande do Sul and crested in the late 1980s and early 1990s, emphasizing natural law and human dignity over legal formalism and the more positivistic law of the dictatorship (Engelmann 2004). The small-N analysis can consider factors like this and assess the extent to which they shaped the reform process. In sum, focusing only on electoral competition – a factor external to the judiciary – yields rival hypotheses and inconclusive or contradictory predictions. While these four logics explain why electoral competition shapes courts, they might provide competing or complementary causal accounts. That is, we do not always know which causal logic is operating in any given sequence of electoral competition followed by reform, or whether more than one logic is operating at any given

time.

2.3. Ideology and Court Strength

In order to generate reliable predictions of judicial reform, we need to know more than just the conditions of electoral competition external to the judiciary. In addition to electoral competition, programmatic-ideological orientation influences judicial strength. Therefore, we need to know the preferences of actors within the judiciary (judges), and we need to know the preferences of politicians. These preferences are conceptualized here (and later operationalized) as ideology. Notably, explanations centering on ideology have a different analytic emphasis than those centering on electoral competition. Where election-based explanations highlight the rational, cost-benefit incentives faced by relevant actors as well as strategic considerations, ideology-based explanations highlight cultural-ideational factors – non-material considerations in a decision that generally have some moral or ethical character. In this regard, ideology-based accounts emphasize the role of ideas and culture. In short, ideas matter.³⁰

Some scholars anticipate that the judiciary cannot reform unless there is a strong commitment for reform by judges in top positions of the judiciary (Nagle 2000). Others have argued that it takes a strong commitment, impetus, or “will” from the state - in the executive, legislative, or judicial branches - to implement reform (Hammergren 1993; 2002). Tsebelis (2002) uses the term “government commitment” to signal the role of ideological intentions or policy preferences in his discussion of veto players and policy choices. Thus, political will can be thought of as an identification between actors and the goals of reform despite the presence of obstacles and constraints. In the Latin American context, Nagle argues that judges - spoiled by corruption and other rents collected due to

³⁰ Thanks to Lisa Hilbink for helping me think about the role of ideas.

their privileged positions – can often become obstacles to reform because it is not in their interest to alter the status quo. That is, judges develop interests of their own – institutional, career, or perhaps pecuniary – that do not necessarily coincide with the public interest (Staton 2007). The commitment to change the status quo, therefore, must come from a deep identification with the goals of reform. It is reasonable to expect that this commitment would come from new political actors or political actors that are ideologically driven, or from judges or other institutional actors that are driven by ideas rather than interests. In short, new and ideological actors serve as political or institutional entrepreneurs, and these entrepreneurs seek to implement policies that reflect their ideological commitments.

Comparative studies of reform teach us that both left- and right-leaning actors favor judicial reform, but for different reasons. On the left, programmatic actors seek to enhance the real effect of individual rights and liberties, contributing to the quality of democratic citizenship. On the right, actors tend to emphasize the security and predictability of commercial transactions, as well as public safety. That is, leftist parties favor democracy promotion, while parties on the right favor market promotion. Morton and Knopf's (2000) work on the Liberal Party in Canada supports this expectation. Epp's (1998) comparative research on "support structures for legal mobilization" also suggests parties with strong links to activist networks will exert greater pressure for judicial change. Gilman (2002; 2006) also finds that "partisan coalitions" of different ideological alignments shape the judiciary in different ways, and Hirschl's (2004) study of constitutionalism and "juristocracy" in four countries found these changes were motivated by neoliberalism.

Focusing on the Iberian Peninsula and Latin America, existing research suggests a similar link between programmatic party commitments and policy change in the legal and judicial arenas. Hilbink's (2007a) study of the stagnating effect of a conservative "institutional ideology" on the Chilean judiciary highlights the role of ideas, and her (2007b) analysis of the key roles of (a) leftist parties and (b) a progressive clergy in "politicizing the law in order to liberalize politics" shows how the currency of ideas shaped both the cultural "frame" and organizational technologies of judicial mobilization in Spain's transition to democracy. In Brazil, the leftist PT initiated the early effort in 1992 to bring about a national judicial reform (Sadek 1998). In Mexico, Mizrahi (1999) finds that crime control increased with the presence of the rightist National Action Party (PAN) in power in Mexico. Thus, leftist and rightist parties are expected to foment judicial reform more than their centrist counterparts. Populist, clientelist, and other parties not easily classified along a left-right spectrum are expected to signal support for democracy-oriented policies to maintain a populist appearance. However, these gestures will lack programmatic commitments necessary for adequate funding or long-term support, and thus are expected to have little effect.

Identifying ideological orientation across the two countries poses different challenges. In Mexico, this coding is relatively simple in a party system that is dominated by three main parties. Political parties evolved out of a dominant-party system under the Institutional Revolutionary Party (PRI) that ruled national politics until 2000. Due to its patrimonial and corporatist structure, as well as its hegemonic and authoritarian tradition, the PRI is not expected to be one of the ideological actors driving positive changes in judicial performance. Rather, the PRI is a non-ideological, populist party (Coppedge

1997, 6; Hecock 2006) that has depended historically on broad latitude for patronage, corporatism, corruption, and vote-buying. The PRI is therefore expected to have a negative relationship with institutional change and judicial spending at the state level. It would not be in the interest of the PRI to promote institutional performance – including judicial performance – that increases the checks and balances on its style of governing. Additionally, in spite of promoting a prominent judicial reform at the federal level in 1994, the PRI’s motivations for that reform remain unclear. While some observers suggest the 1994 reform shows the PRI is in favor of strong courts, the evidence is at best inconclusive and at worst indicates far more parochial interests within the PRI. Although the reform changed the composition of the national supreme court (SCJN) and created a new mechanism for judicial review, the reform also allowed the PRI to control the selection of the 11 new justices on the SCJN, and placed substantial limitations on the effectiveness of constitutional review, limiting standing, statutes of limitations, and the effect of decisions (Ríos-Figueroa 2007; Ríos-Figueroa and Taylor 2006). Moreover, the behavior of the Mexican Supreme Court between 1995 and 2005, both in the “strategic dismissal” of cases and in actual decisions, highlights the PRI-protective aspects of the reform (Magaloni and Sanchez 2006; Magaloni 2008).³¹

Conversely, the center-left Party of the Democratic Revolution (PRD) and the rightist PAN (Coppedge 1997; Bruhn 1999; Mizrahi 2003; Shirk 2005) are both ideological parties that have strong commitments towards judicial reform. The PAN is a

³¹ It is worth noting that in separate interviews during field research, two former PRI politicians suggested that the main motivation of the national reform was to control the composition of the supreme court (Interviews 13; 47). A third interview noted the same, qualifying that the main thrust of the reform was to align the judiciary with economic priorities, primarily international trade and investment (including the North American Free Trade Agreement, or NAFTA), and that removing (all but one of) the existing justices was perhaps the only way to break up the old order that hindered progress towards these priorities (Interview 53).

conservative party of the right, with strong business ties, a free market ideology, and a vocal stance on increasing public safety. It is reasonable to expect the PAN to pressure for reform in the area of commercial and business law, and to pressure for greater efficiency in commercial transactions. Business interests also favor public order and security for their investments, so the PAN is expected to exert a positive influence on judicial strength, both for its own business base and as an indicator of a secure environment for investment and other commercial activity. The PRD is a progressive party of the left, with strong ties to social movements and activist networks. The PRD is therefore expected to pressure for reform in the area of public justice and criminal procedures, highlighting issues of human and civil rights. In sum, judicial strengthening is expected where either the PAN or PRD are dominant, but no significant improvement is expected where the PRI is dominant.

In Brazil and Mexico, conservative parties of the right, with strong business ties and a free market ideology, are expected to pressure for reform in the area of commercial and business law, and to pressure for faster and smoother commercial transactions. Business interests also favor public order and security for their investments, so the rightist parties are expected to exert a positive influence on judicial spending. In contrast, progressive parties on the left, with strong ties to social movements and activist networks, are expected to pressure for reform in the area of public justice and criminal procedures. That is, both rightist and leftist parties are expected to pressure for stronger judiciaries, though for ideologically different reasons. Thus, increased judicial strength is expected where either right or left parties are dominant, but no significant improvement is expected where centrist, populist, or clientelist parties are dominant.

In Brazil, all states emerged from a de facto two-party system in the late 1970s and early 1980s. Prior to 1979, the military regime restricted partisan organization to two parties – (1) ARENA, which represented the sectors supportive of the regime and had roots in the conservative parties of pre-1964 Brazil, and (2) MDB, or *Movimento Democrático Brasileiro*, which represented the opposition. Since then, Brazil’s party system has undergone substantial transformations. First, it appeared that the party system was expanding and fragmenting beyond control, and that ideological commitments were weak or nonexistent. Both of these patterns turned out to be short-lived, due perhaps more to a temporary adjustment to electoral freedoms than to an essential lack of stability of ideological orientations in Brazil. Importantly, the 1988 Constitution describes political parties as “national” in character, and a growing number of scholars identify the systematic nature of ideological identification in the Brazilian electorate and the programmatic-ideological nature of Brazilian parties (Meneguello 1998; Mainwaring, Meneguello, and Power 2000; Singer 2000; Martins Rodrigues 2002, 33-39, 48). Despite some regional variations in party system institutionalization and the degree of oligarquic control of the state apparatus (Meneguello 1998; de Paula 2005), the national party system has stabilized and seems to have become more institutionalized (Meneguello 1998; Martin Rodrigues 2002). The extent to which this institutionalization is reproduced in the provincial party systems is in part the subject of this study.

Parties in the Brazilian states are classified along a left-right ideological spectrum relying on Coppedge (1997), de Lima Jr. (1997), Meneguello (1998), Mainwaring, Meneguello and Power (2000), Martins Rodrigues (2002), and Power and Zucco

(2009).³² The seven most important parties in the time frame analyzed are, from left to right, PT (*Partido dos Trabalhadores*), PDT (*Partido Democrático Trabalhista*), PSDB (*Partido da Social Democracia Brasileira*), PMDB (*Partido do Movimento Democrático Brasileiro*), PTB (*Partido Trabalhista Brasileiro*), DEM (*Democratas*, formerly *Partido da Frente Liberal*, or PFL), and PP (*Partido Progressista*, formerly *Partido Progressista Brasileiro*, or PPB). PT is on the left end of the political spectrum and, along with the Brazilian Communist Party (PCB), is widely regarded as the only unquestionably ideological party formed on a foundation of social movements or forces (Giusti Tavares 1997, 177; Meneguello, 30; Schmitt 2000, 49). PDT is center-left, founded by Leonel Brizola in 1980 after returning from exile, and building on the tradition of the center-left, pre-1964 PTB founded by Getulio Vargas (Schmitt, 26-27).³³ The PMDB is centrist, though it drifted towards the center-right after 2001 (Power and Zucco 2009). The PSDB changed its ideological character in the period analyzed. From its leftward breakaway from the PMDB in 1988 until 1992, the party was center-left. However, between 1993 and 1996 it drifted rightward, and from 1997 onward, Power and Zucco coded it as center-right, to the right of the PMDB. The PTB is center-right, and the PFL/DEM and PP are on the right. Other minor parties that won governorships from 1982 forward were the PSB (left), PCB/PPS (left), PSL (center-right), PL (right), PRN (right), and PTR

³² The discussion in Martins Rodrigues includes comments on work by Kinzo (1993), Figueiredo e Limongi (1994; 1999), Limongi and Figueiredo (1998), Mainwaring and Scully (1994; 1995), and Novaes (1994), among others.

³³ In 1979, Brizola originally intended to revive the PTB after the military's political reforms that allowed more than the two official parties (EC). However, a conservative group – led by a distant niece of Vargas, Yvette Vargas – challenged Brizola for the right to use the initials, and the TSE decided in favor of the conservative group, leading Brizola to form the center-left PDT, which was truer to the policy commitments of the original PTB. Evidence of the conservative nature of the post-1979 PTB includes the fact that three of the four federal deputies that formed the new PTB originated from ARENA, making the composition of the PTB remarkably similar to that of the PDS (more than 80% of PDS deputies and senators came from ARENA). Conversely, the PDT had 10 deputies in the lower chamber of Congress, and not one of them came from ARENA (Kinzo 1988, 209; Schmitt 2000, 50-51).

(right).

It should be noted that this study does not argue that the ideological behavior of parties is uniform across all 26 states. It is not. Rather, the argument regarding the programmatic effect of Brazilian parties emphasizes that, while there are differences in the ideological position of parties across the states, the parties maintain a similar position relative to other parties within individual states. For example, the PT in Rio Grande do Sul is different from the PT in Pará, but in both places they occupy a position to the left of other parties in the states. Similarly, the DEM may be clientelist or neoliberal across different parts of the country, but in all states it anchors the right end of the political spectrum. Thus, the ideological continuum may be wider or narrower in different states, but in all states the PT anchors the left and the DEM and PP anchor the right, with the other parties falling in between in a left-to-right spectrum.

2.4. Integrating Competition, Ideology, and Causal Logics

Following the arguments above, reform in the Mexican and Brazilian states can occur under many conditions, but we expect it to be strongest where electoral competition breaks up traditional patronage structures – associated historically with the PRI in Mexico and with ARENA/PDS-based parties in Brazil – and where new, ideologically motivated politicians (e.g., PAN or PRD in Mexico, or PT in Brazil) coincide with ideologically sympathetic judges. Reform is not expected where traditional, authoritarian elites remain dominant, e.g., single-veto player environments consisting of authoritarian elites. In these conditions, the veto player logic can be qualified as an “antagonistic” veto player logic. Conversely, especially strong instances of reform are expected where

opposition parties become locally dominant, e.g., single-veto-player environments where former opposition parties gain control of both branches of government. These are the optimum conditions for positive judicial change. Given the positive effect of this kind of single-veto-player environment, the veto player logic can be qualified in these cases as an “agonistic” veto player logic. For instance, in Mexico, we should not observe reform in noncompetitive (single-veto-player) PRI environments; this is a political environment that is antagonistic to reform. However, we should observe reform in (1) noncompetitive (single-veto-player) PAN environments, (2) noncompetitive (single-veto-player) PRD environments, and in (3) competitive (multi-veto-player) environments where judges are either PAN- or PRD-sympathetic and lead reform initiatives. Both (1) and (2) are instances of the agonistic veto-player logic, and (3) offers an example of the opportunity logic. If reform does not occur where parties dominate the executive and legislative branches, a reasonable inference is that the party is not ideologically committed to reform. In all cases above, competition and ideology interact to shape judicial outcomes. Table 2.2 summarizes these theoretical expectations, identifying relevant causal logics where appropriate.

Table 2.2. Implied Casal Logic of Reform Using an Integrated Framework.

Reform Preferences (External and Internal)	Electoral Competition (External)	
	Low	High
Political majority (non-ideological) <i>anti</i> -reform Judges <i>anti</i> -reform	No Veto player logic (antagonistic) Patronage preservation	Low Politician led Re-election, Insurance, and Veto player logics Patronage- preservation
Political majority <i>anti</i> -reform Judges <i>pro</i> -reform	Low Judge-led Mobilizing techniques? Framing?	Low Opportunity logic Veto player logic (antagonistic)
Political majority <i>pro</i> -reform Judges <i>anti</i> -reform	Low Veto player logic (antagonistic) Ideology? “reconstructive” mandate?	High All logics
Political majority <i>pro</i> -reform Judges <i>pro</i> -reform	High Veto-player logic (agonistic) (politician-led and judge-led)	High All logics Including agonistic & antagonistic VP logics; outcome depends on strength of coalition (politician-led and judge-led)

Along the left side, Table 2.2 lists four possible preference configurations among politicians and judges. The top row lists two main competition settings – low (e.g., single-veto-player) and high (e.g., multi-veto-player). Boxes 1-8 note the likelihood of reform (No/Low/Med/High), whether politicians or judges lead reform efforts, and what

causal logics or mechanisms should be relevant. The space is empty where reform is not expected (box 1). It should be noted that this alternative framework refocuses our attention on ideology and the role of ideas. Electoral competition is not conceptualized as a necessary condition for reform, while ideology can be a sufficient one. Specifically, reform is hypothesized as possible, even probable, in three low-competition settings. Moreover, ideologically-motivated judges can lobby to persuade politicians to alter their preferences, as in boxes 4 and 8. Judges can target the political majority in the former, and the political minority in the latter.

2.5. Conclusion

The theoretical framework highlights the influence of electoral competition and ideology, drawing on rational-choice, strategic, and social movement accounts of institutional change, and highlighting where the different theoretical accounts coincide with each other and what specific causal logics they yield. The causal logics generate specific expectations regarding both the average relationship we should observe in the large-N analysis and the precise causal patterns – including key actors, events, mechanisms and motivations, as well as sequence and timing – that we should observe in the small-N, process-based analysis. The following chapter turns to these different methods, discussing the special strengths of subnational and multi-method research. The next chapter also explains how the large-N and small-N methods are integrated in the current study, and the strengths of the small-N, process-based analysis in adjudicating among the distinct causal logics discussed above.

3. Methods

Scaled-Down, Cross-Border Nesting: Subnational Nested Analysis in Two Different Countries

3.1. Introduction

The empirical analysis sequences large-N and small-N methods, explicitly integrating the case studies from the small-N analysis within the sample analyzed econometrically. First, using court budgets as a proxy for judicial strength as the dependent variable, time-series cross-section analyses in each country show the significant relationship that both electoral competition and ideology have with court strength. Post-estimation diagnostics identify well-predicted (low-residual) and poorly-predicted (high residual) observations or “state-years”, leading to the identification of generally well-predicted and poorly-predicted cases or states. Based on these diagnostics and variation on key independent variables or the dependent variable, I identify promising candidates for “model-testing” case studies (Lieberman 2005), and build small-N research designs around these cases. In this regard, the large-N analysis serves to both test some of the causal arguments in Chapter 2 and structure a more purposeful selection of cases for in-depth analysis. The small-N research design in each country is composed of three states, and each trio consists of a model-testing case and two additional states that, together with the first, represent the full variation along key independent variables of competition and ideology. That is, each set of cases reflects the “trilogy” of political variation in provincial party systems in each country. Having selected the cases for qualitative analysis, I employ theory-guided process tracing (Hall 2003; Falletti 2006) to further test the causal relationships anticipated in Chapter 2. The process tracing relies on 115 personal, semi-structured interviews with judges and other

legal elites, document analysis, and direct observation carried out during 22 months of fieldwork.

The empirical analysis draws on the methodological strengths of a subnational level of analysis, the selection of data and cases from two different countries, the combination of quantitative and qualitative methods, and the combination of “nested” and “structured” logics of case selection to bolster causal inferences. Indeed, the combination of these four research design elements provides analytic gains in terms of measurement (i.e., construct) and internal validity, enhancing the validity of conclusions.

The following sections discuss each of these four components of the research design in greater detail. Reprising Snyder (2001b), Section 3.2 highlights the strengths and weaknesses of subnational research, noting how the current research design draws on the strengths while seeking to overcome the two weaknesses identified by Snyder. Specifically, Snyder notes strengths regarding the increased number of observations and the enhanced ability to make controlled comparisons, along with measurement and theory-building gains. However, he also highlights two potential weaknesses of subnational analysis – (i) reduced generalizability and (ii) threats to inference due to the interdependence of observations. I follow Snyder’s suggestions for overcoming the first weakness, but I add my own observations about overcoming the second. Regarding the latter, Snyder warns that the lack of independence of observations undermines the validity of inferences, but I argue this is mainly a concern in the quantitative, statistical, correlation-based research tradition. Following Hall (2003) and Brady and Collier (2004), process-based inferences are different from correlation-based inferences. Thus, observational independence is less of a threat to inferential validity in qualitative research

that draws on “causal process observations” and a different, process-based logic of inquiry. Section 3.3 highlights the strengths of multi-method research in general, and subsequently details the particular approach to integrating quantitative and qualitative methods employed here. This section is therefore divided into three subsections that discuss each the following: (a) the quantitative methods employed in the large-N, econometric phase of analysis, specifically, time-series cross-section (TSCS) methods; (b) the process of case selection, which explicitly links the quantitative and qualitative phases of analysis by “nesting” case studies within the same samples analyzed econometrically (Coppedge 2005; Lieberman 2005) and then builds a structured, controlled, small-N qualitative research design (Collier 1993; Snyder 2001a) around the nested cases; and (c) the theory-guided, process-based qualitative methods (Hall 2003; Falletti 2006) employed in the small-N phase of analysis in a total of six states (three in Brazil and three in Mexico) over the course of 22 months of fieldwork. The chapter concludes by highlighting the strengths of the particular combination of methodological choices in the current research design.

Aside from clarifying the methods of the current project, this chapter addresses four methodological concerns for future comparative research: (i) the ways in which process-based, qualitative analysis at the subnational level can neutralize Snyder’s (2001b, 103-104) methodological concerns regarding policy diffusion and the interdependence of observations; (ii) particularly promising aspects of research designs that pair intra-national and inter-national cases in regions like Latin America; (iii) understudied opportunities for case selection provided by nesting case studies within time-series cross-section datasets, especially at the subnational level; and (iv) the

advantage of combining different strategies for case selection, namely, “nested” analysis with small-N, controlled comparisons, potentially including most-similar systems (MSS) or most-different systems (MDS) designs.

3.2. Subnational Research: Leveraging Strengths, Overcoming Weaknesses

Echoing Lijphart’s (1971, 689) advice on the strengths of “intra-national” research designs (“the advantage of intra-unit comparison is that inter-unit differences can be held constant”), Snyder (2001b) issued a clarion call for cross-territorial analysis within single countries.³⁴ Snyder reminded comparativists that subnational research provides three distinct methodological advantages: (1) greater unit homogeneity vis-à-vis whole countries, controlling for country-level factors and decreasing the number of plausible alternative explanations, therefore providing greater analytic leverage and more controlled comparisons; (2) increased measurement validity, or construct validity; and (3) improved understanding of the uneven process of policy change across political units within a single country, strengthening theory-building exercises.

In the study of state courts in Brazil and Mexico, Snyder’s first point means that it makes more sense analytically to compare the judiciaries of two states within a single country, e.g., Hidalgo and Michoacán in Mexico, or Acre and Maranhão in Brazil, than to compare the national supreme courts of Brazil and Mexico, or the national courts of any

³⁴ Notably, subnational research had begun well before Snyder’s call. Snyder cites several early examples, including Lipset (1966) and Linz and de Miguel (1966), but more recent work begun in the 1990s includes Beer (2001; 2003) and Snyder’s own research in Mexico (1999a; 1999b; 2001a). Additional examples of this kind of research design, testaments to the influence of Snyder’s article, include Hecock (2006; 2007), Jepsen (2006), Cleary (2007), Giraudy (2009), Armesto (forthcoming 2009), and Micozzi (forthcoming 2009).

two countries, for that matter.³⁵ In the subnational design, we can control for structural and historical similarities, including macroeconomic context, the timing and nature of transitions to democracy, social and cultural patterns, as well as legal culture and the timing and content of national judicial reform efforts.³⁶ That is, there is less random heterogeneity in a sample of subnational units within a single country than in a sample of national units in cross-country research. Following Sartori's admonishment that "to compare is to control", and thus that we should enhance the extent to which our research subjects are "comparable" (1970, 1035),³⁷ Snyder's emphasis on subnational designs makes methodological sense.³⁸

Snyder's second point is that the subnational level of analysis is advantageous because of the closer correspondence between concepts and variables. That is, we should be able to more accurately measure concepts like "judicial power", "judicial strength", or "rule of law" at the subnational level than at the national level, strengthening measurement or construct validity.³⁹ These measurement gains overcome what Rokkan

³⁵ Paralleling Snyder's analysis of one sector of the economy – the coffee sector – this study analyzes one institutional sector of the state – the judicial sector.

³⁶ As noted by Eulau (1966, 397-398), using his own work on the State Legislative Research Project (SLRP) as a central point of departure, "[r]esearch in [U.S.] state politics seemed to be a particularly opportune way of advancing comparative analysis because the number of uncontrolled variables would be substantially reduced: a considerable degree of institutional similarity and behavioral uniformity could be assumed to exist from state to state."

³⁷ The issue is "comparability" (Eulau, 398). Smelser (1967, 114-115) also notes that "intra-unit comparisons may prove more fruitful than inter-unit comparison" because less heterogeneity inheres in the former. See also, Lijphart (1971, 689), stating "comparability can also be enhanced by focusing on intranation instead of international comparisons."

³⁸ "[I]f 'control' is the *sine qua non* of all scientific procedure, it would certainly seem easier to obtain in a single culture, even one as heterogeneous as that of the United States, than across cultures" (Eulau 1966, 397).

³⁹ Some observers may note that judicial budgets, which are examined in Chapters 4 and 5, are not the best measures of judicial strength. Still, they are better measures of judicial strength throughout Mexico than a single measure of judicial spending at the national level for federal courts or, as is more often the case, the high court. Additionally, the qualitative analysis expands the range of outcomes examined to measures of administrative capacity and a much more textured discussion of court strength as it relates to the daily lives of ordinary citizens in different contexts than would be possible at the national level.

(1970) called the “whole nation bias” of cross-national research.⁴⁰ Where cross-national research relies on national averages or means to operationalize a concept, or infers national values from “best known cases”, e.g., drawing conclusions about the whole of Brazil from well-known states like São Paulo or Rio de Janeiro, subnational research also overcomes “*mean-spirited analysis*” (emphasis added) and “misuse of the best known case” (Snyder, 99, also calling the latter “invalid part-to-whole mapping”). As one Brazilian judge noted, “you cannot see Brazil through [the state of] Rio Grande do Sul, [and] you cannot see Brazil through [the state of] Maranhão; states within the same country are completely different realities” (Interview 160).⁴¹ Thus, measurement and coding gains from intra-national analysis of cross-territorial variation within a single country yield coding gains for subnational units that enhance our ability to make accurate causal inferences.⁴² Further, when the time comes for inter-national comparisons, these measurement and codings gains would allow a better basis for comparison since each nation is better characterized.⁴³

The third point Snyder makes has received growing attention in the last two decades in studies of democracy, democratization, and democratic governance. That is, large-scale processes like political or economic development occur in territorially uneven patterns within large countries. O’Donnell (1993) makes this point about state-building, noting that the state can have a very strong presence in some areas, usually metropolitan centers, but that in other “brown areas”, usually rural peripheries, the state is almost

⁴⁰ Also cited in Lijphart (1975, 167). See also, Snyder’s discussion of Hagopian (1996) (Snyder 2001b, 106-107, fn. 30).

⁴¹ Author’s own translation; original Portuguese: “você não pode ver o Brasil pelo Rio Grande do Sul; não pode ver o Brasil pelo Maranhão... estados no mesmo país são realidades totalmente distintas.”

⁴² Abstractions from variable to concept make more sense intra-nationally, i.e., concepts travel better within single countries than across countries, reducing the risks of conceptual “stretching” (Eulau, 401; citing Sartori).

⁴³ Thanks to Bill Stanley for suggesting this phrasing.

completely absent or irrelevant to local affairs. Stated otherwise, there is no public presence in some parts of large countries, leading to patterns of privatization – of resources, decision-making, and even forceful coercion and violence (e.g., militias, private security groups, or vigilanteism) – that are antithetical to democratic practice and citizenship. Indeed, one of the greatest challenges for students of new democracies is to provide better explanations for how to *de-privatize* what should be public functions, i.e., how to institutionalize public functions, or how to make institutions less territorially uneven. This unevenness is what Snyder labels the “patchwork pattern” of the state, democracy, development, or any other major political phenomena, and he sees subnational research as offering several valuable corrections for theory building regarding the “dynamic interconnection between levels and regions” of a regime (Snyder 2001b, 100). Resonating with Snyder’s second point about measurement validity, failure to capture and understand this unevenness across territorial units or regime levels can lead to misleading inferences and “skew” theory building (Snyder 2001b, 94).

A central part of the argument presented in the current project is that the strength (and strengthening) of state courts in Brazil and Mexico exhibits this unevenness. Following Linz and de Miguel’s (1966) work on subnational variation across Spain’s eight territorial divisions, or the “eight Spains,” and noting that Brazil and Mexico have 27 and 32 states, respectively (including their federal districts), the current project could be retitled court strength in the “27 Brazils” and “32 Mexicos.” A better understanding of how policies regarding the judiciary change in the 27 Brazils or 32 Mexicos, and of how policy change at the local level interacts with policy change at the national or supranational levels, meets the theory-building dimension of Snyder’s appeal for

subnational research.

However, Snyder also notes two weaknesses of subnational designs. First, the design reduces our ability to generalize to other countries or other levels of analysis. Second, the very strength of unit homogeneity generates threats to our ability to draw inferences due to the interdependence of units, i.e., the lack of independence among observations, because of policy diffusion, borrowing, or migration (Snyder, 103-104). Lieberman (2005) expresses a similar concern in noting that we should avoid picking cases that are close to each other because of the risk of hitting a “political neighborhood”. Both of these vulnerabilities can be overcome. I follow Snyder’s suggestions for overcoming the first. Drawing on recent developments in qualitative methodology, I offer my own suggestions for how small-N, process-based research overcomes the second.

The first weakness – that findings are less generalizable – asks us to consider the following questions. Beginning with the examples from Brazil and Mexico, why should the lessons we draw from Mexican states be true for Brazilian states, or vice-versa? Why should a study of Argentine provinces tell us anything useful about Canadian provinces, U.S. states, German *lander*, Russian republics, or cantons in China?⁴⁴ Pressing further still, why should a study of subnational units teach us anything meaningful about national units, even small national units like Ecuador or El Salvador? Following Lijphart’s (1971; 1975) and Snyder’s (2001b) own advice to combine “intra-national” and “inter-national” data, as well as Snyder’s additional suggestion to select non-contiguous states within

⁴⁴ The examples of Russian republics and Chinese cantons might raise the added concerns that China is autocratic and Russia is not “as democratic” as the other countries mentioned, and therefore that lessons learned from democratic contexts, e.g., Argentine provinces, might not travel as well to non-democratic contexts. These concerns simply restate the importance of comparability, i.e., that the concepts and process of political change in democracies and autocracies are not comparable. However, a colleague (Kim Nolan) and I have often marveled about striking similarities between Mexican and Russian politics, prompting us to rethink a comparability question, “how Mexican is Moscow?” Perhaps Mexican states can, after all, teach us meaningful lessons about Russian republics.

each country (Snyder 2001b, 97, 104), this project overcomes the first concern by selecting data and cases from *non-adjointing states in two different countries*. Notably, the trade off is that states can be from very disparate regions, thereby reducing the comparability of cases. However, all empirical analysis rests on trade-offs (see Gerring 2001) and “fine judgments” (Hall 2003, 392), and the trade-off here errs in favor of generalizability, mindful that the qualitative analysis should be attentive to the influence of regional disparities among the cases. In short, if we can draw the same or similar conclusions from non-neighboring states within each country, as well as across both Brazil and Mexico, we can be more confident in their validity.

This discussion of generalizability raises an additional question regarding case selection, namely, why Brazil and Mexico? Why not other countries? Section 3.3 below addresses why I selected certain states within Brazil and Mexico for the in-depth case studies, but why did I pick Brazil and Mexico in the first place?⁴⁵ The answer to this question is in part practical and personal, and in part methodological. First, in order to examine subnational court systems – state courts – there are only a limited number of federal systems from which to choose, and my family background in Mexico disposed me to favor that country, or at least to remain within the Latin American region. Once within Latin America, the choice of federal systems is effectively restricted to Argentina, Brazil, and Mexico. Among these three cases, it would have been easier to select Argentina and Mexico, since Brazil required me to learn Portuguese (I already spoke Spanish). It might have been easier – and cheaper – to pick Argentina and Brazil, since travel between them would be shorter. However, Mexico and Brazil offered the most variation across two

⁴⁵ I ask this question self-consciously and somewhat contemptuously, fully aware that Americanists are rarely, if ever, asked to justify their country selection.

background conditions: (1) style of authoritarianism (Argentina and Brazil both endured military regimes, where Mexico's had a dominant-party regime); and (2) temporal span of authoritarianism (Argentina and Brazil both had uneven patterns of autocracy and democracy throughout much of the 20th century, but had recently lived through similar phases of autocracy, 1966-1973 and 1976-1983 in Argentina and 1964-1985 in Brazil, whereas Mexico was emerging from seven decades of authoritarian rule). Moreover, Brazil and Mexico have different party systems and styles of judicial federalism. Brazil's party system consists of multiple parties, with 14 different parties winning governor races in the post-authoritarian period, whereas Mexico's is essentially a three-party system dominated by the PRI, PAN, and PRD. Counterintuitively, Brazil's judiciary is highly centralized in terms of institutional structure and design, while Mexico's judiciary is highly decentralized. As a result, there is greater system-level variation across Mexico and Brazil than across either Mexico and Argentina or Argentina and Brazil. Returning to the discussion of generalizability, if the analysis across Mexico and Brazil reaches the same conclusions regarding causal pathways despite these differences, then our confidence in these conclusions will be stronger. Thus, the selection of these two countries draws on the advantages mentioned above of combining intra-national and inter-national research designs, i.e., of conducting subnational research in more than one country and maximizing the variation in relevant variables across the two countries in order to enhance the validity of conclusions.

With regards to the second weakness of subnational designs identified by Snyder – the interdependence of observations – Snyder does not offer any suggestions for how to overcome or neutralize this obstacle. I argue that the concern regarding the independence

of observations is, in part, misplaced. Such a concern is appropriate in quantitative, frequentist settings, but is less of a threat to inferential validity in qualitative, process-based analysis, where the logic of inquiry is different. Specifically, small-N, qualitative research that employs process-based analysis of the kind used here (see Section 3.3.3 below for fuller discussion of process tracing) draws on an inferential logic that is not hampered by the interdependence of observations. More cautiously, it might be the case that the processes experienced in the examined states are unrepresentative of states generally. That is, a causal process detected in one state might be either idiosyncratic or the result of some undetected causal dependence that affects other states. With regard to the former, the selection of more than one case for the small-N research design reduces the risk of generalizing from idiosyncracies.⁴⁶ With regard to the latter, considering that “causal analysis is inherently sequence analysis” (Rueschemeyer, Stephens, and Stephens 1992, 4; cited in Thelen 1999, 390), process-based inferences enjoy an analytic advantage over correlation-based inferences in being able to detect this causal dependence. That is not to say that process tracing or historical analysis is a panacea, but that the method does provide leverage for at least reducing or minimizing risks derived from causal interdependence, leverage that frequentist assumptions overlook.

This point deserves further emphasis. Recent developments in qualitative methodology assert a fundamental difference in the inferential logic of large-N, statistical analyses and small-N, process-based analyses. The conventional view of case studies and small-N research is that this approach is a weak version of statistical analysis. Within this

⁴⁶ Thanks to Bill Stanley for helping me think about this, as well as the broader issue of trade-offs inherent in choosing among different research strategies.

frequentist view, case studies are fraught with problems of selection bias⁴⁷ and indeterminate results associated with “omitted variables”, “too many variables, too few cases”, or interdependence. Thus, the pervasive prescription is simply to increase the number of cases (Lijphart 1971; King, Keohane, and Verba 1994). That is, to build a dataset for quantitative, statistical analysis.

Qualitative methodologists respond differently. First, scholars have sought to clarify the distinction between different types of observations, or between “case” and “observation”, noting that a single case can yield multiple observations, or that a single observation (albeit, in context) can have a high degree of probative value. Thus, criticisms regarding overdetermination or indeterminacy associated with the “too many variables” concern are largely misplaced, even if we think of policy diffusion or interdependence as adding an additional variable to the examination of a single case. More importantly, the *nature* of an observation can be different if one is highlighting a process or mechanism than if one is simply measuring a variable and looking for statistical correlations with other variables. In the language of *Rethinking Social Inquiry*, statistical inference based on average effects across a large numbers of “dataset observations” (or “DSOs”) in a rectangular dataset is not the same as the logic of inference based on examining “causal process observations” (or “CPOs”) in qualitative research (Brady and Collier 2004).⁴⁸ DSOs are pieces of data that are quantified, placed in a rectangular dataset, and then analyzed for average effects or correlations in the

⁴⁷ Case selection is addressed fully in section 4.3. However, selection bias in qualitative research largely reduces to a problem of selecting cases on the dependent variable when the range of that variable is truncated, i.e., when only high (or low) values of that variable are analyzed (Collier and Mahoney 1996; Collier, Mahoney, and Seawright 2004). This is not the case here, where the values on all measures of judicial strength vary across the three cases in each country.

⁴⁸ In an essay on causal mechanisms that resonates with the discussion here, Hedström (2008, 320) notes that “statistical inference” and “causal inference” are “different kinds of activities”,

conventional frequentist mold. If the strength of these correlations crosses a certain threshold of probability, the analyst can conventionally make an argument regarding causation. The analysis of CPOs, however, is different. Rectangular datasets, average effects, and correlations are immaterial. Rather, the analyst judges observed causal processes or “chains” – including key events or markers, as well as the timing or sequence of these events – against anticipated causal patterns derived from theory. In this regard, a single case can yield several observations along a causal chain, or even several different causal chains. Moreover, a single causal chain can be used to test theory, or a single observation along this chain can have great causal value, and the extent to which the theory is confirmed or disconfirmed helps to refine or build new theories, though problems of generalization may persist. An observed causal process – consisting of multiple CPOs – may match the anticipated causal patterns, or it may reveal new antecedent, intervening, or conditioning factors (Hall 2003). Further, multiple observations from within a single case offer different kinds of evidence – some strong and some weak – that must be evaluated for their probative value, and a single, strong observation can offer evidence that confirms or falsifies a theory (Van Evera 1997; Bennett 2008). Ultimately, a single observation can have high probative value and inferential weight depending on the kind of evidence it is. In Van Evera’s terms, “hoop” tests and “smoking gun” tests can offer decisive negative and positive evidence, respectively – ruling causal factors in or out – and some observations are “doubly decisive” in that they can offer both kinds of evidence.⁴⁹

Recalling Snyder’s concern regarding the interdependence of observations, the frequentist, correlation-based logic of inquiry of quantitative analysis assumes

⁴⁹ As Van Evera notes, most evidence is of a fourth, less conclusive type, that is, “straw in the wind”.

observations are identical and independent (identically and independently distributed, or “i.i.d.”), and the concern is that subnational case studies, in addition to violating the other assumptions of statistical research, violate the independence assumption, as well.

However, following these recent corrections in qualitative methodology, the language, terms, and assumptions of statistical inference are misapplied if used to describe the standards of inferential reasoning in process tracing. Small-N, process-based analysis, rather than being a “distinctly fragile” version of statistical analysis,⁵⁰ is a distinctly stronger method for the task of examining whether interdependence shapes outcomes of interest. That is, the risk of contamination across interdependent observations is strong in purely quantitative research, but this risk is in large part neutralized in qualitative research that employs process tracing. In the current project, the phenomenon of policy diffusion or borrowing is something to look for in the case studies, but its presence or absence does not in and of itself make inferences drawn from these case studies less valid. Indeed, not only can process-based case studies overcome the methodological concerns associated with correlation-based analyses, but they also align more closely with the new ontologies of comparative politics that understand causation in relation to context, complexity, and conditionality (Hall 2003).⁵¹ Indeed, as suggested by Pierson and Skocpol (2002, 711), a historical institutional approach employing process tracing may be best suited for addressing causal complexity given that this approach assumes

⁵⁰ The phrase is from Hall (2003, 381). Notably, Hall is criticizing this derogatory view of case-based research.

⁵¹ Hall identifies the old ontology as that which “saw the political world as a sphere governed by immutable causal regularities based on a few forceful causal variables” (387). Within such an ontology, it is understandable that explanation would be seen as “a matter of attaching weights to a small set of causal variables”, that correlation-based regression analysis would be the privileged *modus operandi*, and that parsimony would be valued over complexity (386-387). Notably, Hall does not discredit statistical analysis and indeed states there is a methodological space for it. However, he draws on the advances in strategic interaction, primarily noncompetitive game theory, as well as path dependence, to assert that context, causal complexity and conditionality are centerpieces of the new ontology (384-387)

“operative variables may not be independent of each other at all”, and understands that “causally important variables are often bundled together in the real world”. Mahoney and Rueschemeyer complement, arguing that historical analysis can help determine whether cases and observations are independent of each other (2003b, 13), that is, whether processes within subnational units are independent of processes occurring nationally or across a large set of states.⁵²

Brady (2008) notes that an examination of causation seeks to understand why and how an empirical regularity occurs. This perspective emphasizes the identification of causal processes, mechanisms, and motivations in order to be able to describe how and why an empirical regularity occurs, paying special attention to the temporal nature of causation – how causal processes activate and unfold over time (McKeown 2004, 150-151; see Brady 2008; DeFelice 1986). This study seeks to do just that, identifying the critical role of both politicians and judges in the process of judicial changes, and emphasizing how judicial lobbying, labor actions, and litigation may shape the process of change. For instance, judges lobby for material considerations, but they also lobby for ideational change and new policy ideas. The movement of these ideas can often be traced nationally, subnationally, and even internationally. In one example from Mexico, a local judge who played a critical role in designing and implementing judicial councils at the local level had studied the Spanish judicial council while a law student in Spain, had been profoundly influenced by leading progressive judges in Spain, and had clerked for a federal judge and at the federal judicial council in Mexico City. Thus, a policy idea gained currency and viability through international and national influences, materializing

⁵² “[T]he question of whether and to what extent different cases are independent of each other can be subjected to nuanced examination through the intensive study of cases” (Mahoney and Rueschemeyer 2003b, 13)

several years later at the local level. In short, the evidence may show that centrifugal policy diffusion from the national center to the subnational margins occurs, or the evidence may show diffusion does not occur. If diffusion does occur, it may take unexpected forms, such as the international flow of ideas described in the example above, rather than in the purely domestic, centrifugal, center-to-margin pattern from the national capital to the provinces. In either case, by focusing on the causal process of change and fleshing out mechanisms and motivations, the logic of inquiry is much less vulnerable to violating the assumption of observational independence in quantitative analysis. In short, concern about this assumption is misplaced in process-based, qualitative case studies at a subnational level of analysis, thereby strengthening Snyder's general argument regarding the analytic value of subnational designs.

Moreover, where Snyder (2001b) warns against lapsing into false security of comparability with subnational units, highlighting that there may be other confounding factors, such as policy diffusion due to the interdependence of units, I warn that this is also the risk with attempting to control for the similarity of non-political factors. In short, careful case selection can enhance comparability, but never fully neutralizes alternative explanations. Rather, just as with policy diffusion, careful and self-conscious within-case analysis must be alert to alternative explanations – cultural, historical, ecological, socioeconomic, or other – and leverage the evidence available to rule for or against these explanations. In fact, if quantitative analysis assumes observations are identical and independent, as is the case with standard OLS regressions, careful qualitative analysis is always aware that observations are rarely (if ever) identical or independent, and therefore examines dissimilarity or interdependence when found. Again, this is not a “degrees of

freedom” problem. That hurdle of statistical inference is not a similar obstacle in process-based inferences. Thus, the process tracing employed in the small-N analysis is also well-suited for examining behavioral equivalence and causal complexity, alternately understood as equifinality or multi-causality. Thus, the combination of both quantitative and qualitative methods ameliorates this concern in the present research. It is to this integration of multiple methods that I now turn.

3.3. Multi-Method Research: Integrating Quantitative and Qualitative Methods

This research sequences quantitative and qualitative methods to yield conclusions that would not be possible using either method in isolation. First, I conducted time-series cross-section analyses with court budgets as a proxy for judicial strength as a dependent variable. Subsequently, quantitative tools for case selection identified statistically typical, well-predicted observations (“state-years”) in each sample, nesting two “model-testing” cases (Lieberman 2005) in each country – Acre in Brazil and Aguascalientes in Mexico. I then built a small-N research design of structured, controlled comparisons in each country around these two cases, resulting in a qualitative analysis of three states in each country. Thus, each small-N design is anchored by the nested, model-testing case in each country. The in-depth case studies draw on qualitative research tools, including 115 personal, semi-structured interviews, archival evidence, and direct observation.

Recalling Brady and Collier (2004), this mixed-methods approach combines “data-set observations” (DSOs) and “causal-process observations” (CPOs). While the differences between types of observations were relevant for the discussion of interdependence in subnational research, these differences are also relevant for multi-

method research. Each approach has its strengths and weaknesses. Large-N statistical analyses allow the examination of variation and co-variation among independent and dependent variables across a large number of cases, emphasizing the average effects among these variables. However, these analyses often miss important details, or questions remain about quality of measurement, timing, sequence (causal order), complexity, or heterogeneity (Lieberman 2005, 442; Pierson 2000). Conversely, small-N analyses or single case studies may not be representative, and qualitative examinations of these cases may lead to overgeneralization from case-specific or idiosyncratic causal processes (Munck 2004). Both approaches are imperfect, but their combination – a “diversity of imperfection” – allows us to draw on the strengths of one approach to “compensate for [the] particular faults and imperfections” of the other approach (Brewer and Hunter 1989, 16-17). In drawing on this diversity of imperfections, the analysis avoids the pitfalls associated with “mono-method” or mono-data approaches, relying on the strengths of each tradition to offset the weaknesses of the other (Jick 1979; Tashakkori and Teddlie 1998, 40-42). These different “streams of evidence” (Beer 2003, 8) join in a process of triangulation across data (data triangulation) and across methods (methods triangulation) in order to enhance the validity of conclusions (Denzin 1978; Tarrow 1995). Moreover, the explicit nesting of the case studies within the sample analyzed econometrically also strengthens causal inferences.

3.3.1 Large-N Method: Time-Series Cross-Section (TSCS) Analysis

In the large-N phase of research, the unit of analysis is the “state-year”. The panel datasets have 502 observations from Brazil and 259 observations from Mexico ($N_{BRA} = 502$ and $N_{MEX} = 259$). These observations come from all 26 Brazilian states and all 31

Mexican states, excluding the federal district in both countries. The time span ranges from 1985 to 2006 in Brazil and from 1993 to 2007 in Mexico. Thus, the time periods cover some portion of the authoritarian period, the transition, and a post-authoritarian period in each country.⁵³ However, data are available for varying numbers of years in each state and in each country, making the panels unbalanced. In Brazil, a minimum of 14 time points and a maximum of 22 time points are available. In Mexico, the minimum is five and the maximum is 14. There were some missing data in Mexico due to incomplete reports from individual states, but this small number of gaps (five) occurred in single time points within longer series of data, so the gaps were filled with interpolated values. Thus, there are no remaining gaps in the dataset. Data from each country are analyzed separately, not pooled.

This unbalanced panel structure of the data generates several methodological challenges. Standard OLS regression models assume the independence of individual observations, an assumption that is violated both temporally and spatially with the “state-years” analyzed here. State-years are correlated over time within each panel (state) and across space within each time point (year).

Several statistical techniques attempt to correct for problems associated with these

⁵³ This assertion is clearest in Mexico, where the national PRI-to-PAN transition occurred in 2000. Some observers may object to the assertion as applied to Brazil in that governor election were held for the first time in 1982, and there was a presidential election in 1985. Spending data were not available systematically prior to 1985. Nonetheless, I follow other scholars in expressing skepticism that Brazil’s transition to democracy can be unequivocally marked in 1985, much less 1982. The military regime began its opening, or *abertura*, in the 1970s under General Geisel, and parties were allowed to re-organize in 1979. The competitive gubernatorial elections in 1982 were a positive sign, but the military still held the reins of power, and refused to allow popular presidential elections in 1985 despite the powerful movement for direct election, *diretas já*. Thus, the presidential election in 1985 was moderated by the electoral college, endorsing the alliance between conservatives and centrists in the form of José Sarney and Tancredo Neves, respectively. The continuity of conservative forces is highlighted by Sarney’s rise to the presidency after Neves’s sudden death, marking in many ways a PDS presidency (Mainwaring, Meneguello, and Power 2000). A more reasonable transition point seems to be 1989, after the new constitution came into effect in 1988 and direct elections for the presidency were allowed in 1989.

challenges, including fixed-effects models (FEM), autoregressive models (AR), random-effects models (REM), panel-corrected standard errors (PCSEs), lagged dependent variables (LDVs), population-averaged, generalized-estimating equations (GEE), and the use of dummies for both time points and spatial units.⁵⁴ Considering these

⁵⁴ FEMs are inappropriate where key explanatory variables are time invariant or have “level effects” since the FEM will obscure the significance of these variables (Plümper et al. 2005). In both Brazil and Mexico, the theoretical model anticipates electoral competition and programmatic-ideological orientation to have a meaningful impact on judicial spending, and both of these variables are relatively time invariant and also generate level effects. For instance, measures of legislative ideology change at most every three years within units. Also, a shift in the mean-left-right-position from -0.40 to -0.20 is not the same as the shift from 0.20 to 0.40 . That is, both shifts involve an equal change of 0.20 points on Coppedge’s ideology scale, but theory anticipates that remaining on the left (negative) side of the scale will have a qualitatively different effect than remaining on the right side of the scale.

Similarly, a LDV model is not the best solution because it will absorb the significance of other explanatory variables (Achen 2000). As noted by both Plümper et al. and Achen, LDVs are *atheoretical* corrections that, while improving the formal statistical fit of a model, do not generate any theoretical insights. They may also incorrectly specify the temporal correlation, i.e., assuming an AR(1) disturbance rather than AR(2) or AR(3). Moreover, in short time series like those analyzed here, LDVs threaten to produce other statistical irregularities and obliterate the significance of theoretically-derived variables. The short time series of no more than 22 years in either country also mean time dummies are not justified. Moreover, there are no clear temporal moments, stages, or “eras” within these short time series that clearly motivate the inclusion of time dummies.

Following Huber et al. (2006), AR models are also inappropriate with unbalanced panel data because AR models require the same number of time points (t) across all units. That is, AR models require balanced panels. Moreover, AR models require the number of spatial units (n) to be smaller than the number of time points, i.e., $n < t$ (Huber, 956). Since the number of states in Brazil and Mexico (26 and 31, respectively) exceeds the maximum number of years in each country (22 and 14, respectively), AR models cannot be used.

Similar problems arise with PCSEs. Beck and Katz (1995) recommend using ordinary least squares (OLS) modified to calculate PCSEs for TSCS data. As is the case with AR models, however, these methods work best when $t > n$. In such circumstances, PCSEs are indeed the “gold standard” in the discipline, as Greg Wawro noted at a panel on time-series analysis at the 2005 annual meeting of the American Political Science Association. However, because this study analyzes judicial spending in 26 states over 22 years (Brazil) and 31 states over 14 years (Mexico), it is always the case that the number of time points is lower than the number of panels, i.e., $t < n$, and the number of time points (22 and 14, respectively) is low in both countries. Therefore, PCSEs are not statistically appropriate.

Beck and Katz (1995a) show that the GLS method for dealing with TSCS data generates lower standard errors and inflated t -statistics when there are fewer time points than panels (644-45), thus generating biased coefficients (they say that GLS is “unusable” even when the number of time points is close to the number of panels, and that it is only good to use GLS if the number of time points is “substantially” greater than the number of panels). Thus, if there are fewer time points (t) than panels (n), or $t < n$, Beck and Katz suggest the use of OLS with PCSEs (*xtpcse* with data set for time series (*tsset*) in Stata). However, Liang and Zeger (1986), suggest GEE, not OLS with PCSEs, is appropriate where there are “few observation times”, i.e., where t is low. Indeed, Liang and Zeger highlight that GEE is *only* appropriate under such circumstances. “Few” is unclear, but their own example No. 5 works on t being less than or equal to 10. In the analysis presented here, $t = 22$ in Brazil and $t = 14$ in Mexico, so GEE is employed. Hecock (2006) applies a similar model in the analysis of educational spending in the Mexican states from 1998-2003. Given Liang and Zeger’s apparent caution against using GEE where $t > 10$, some analysts might argue that OLS with PCSEs should be used here, where $t = 22$ in Brazil and $t = 14$ in

methodological hurdles, and following Zorn (2001) and Liang and Zeger (1986), the large-N analysis applies a population-averaged panel-data model, or generalized estimating equation (GEE), with a forward-lagged dependent variable to capture temporal dynamics.

GEE models are appropriate here for both statistical and substantive reasons. First, GEE models address the statistical difficulties presented by the TSCS data without generating any of the concerns identified above. Second, the substantive interest here is to identify the average effect of the explanatory variables across the entire sample in each country, rather than the section-specific (unit- or panel-specific) relationship between explanatory and dependent variables. In other words, the goal here is to identify the average effect of competitiveness and commitments on spending across all Brazilian states and all Mexican states, not to identify the character of this relationship in just one or two states in each country. Following Zorn (2001), marginal or population-averaged models like GEE are more suited for this substantive interest than conditional, clustered, or panel-specific models.⁵⁵ Zorn also advises that this substantive interest is more important than the statistical concern, and should drive model selection (Zorn, 475), a concern echoed by Plümper et al. (2005) in their emphasis on the “theory-nexus” of method selection. In sum, statistical and substantive concerns support the use of GEE. Nonetheless, checks for robustness included OLS with PCSEs, PCSEs with a panel-specific AR1 correlation, and a fixed effects model. The results are substantially similar in each of these models. Indeed, most of the additional models showed stronger effects of

Mexico. However, these are *maximum* time points per panel. There are other panels with as few as five (5) time points in Mexico and 11 time points in Brazil.

⁵⁵ All models estimated with Stata v9.0 using *xtgee*. Data and do-file available from the author.

competition and ideology on judicial spending, suggesting the GEE results reported here are among the most conservative.

3.3.2. Case Selection:

Anchoring Small-N Research Designs with Nested, Model-Testing Cases

Case selection requires consideration of both methodological and non-methodological issues. Feasibility is one of the principal non-methodological considerations (Gerring and Seawright 2006, 2).⁵⁶ In turn, methodological considerations in case selection can be approached with qualitative or quantitative tools. Conventional qualitative approaches to case selection offer several options. The logic of crucial cases (e.g., least likely or most likely cases), and typical or deviant cases (“typical” or “deviant” in the general sense of appearing to conform or not conform to theoretical expectations, which is different from the statistical “typicality” of cases as discussed below) is prominent in the case study literature. Paired cases might also follow Mill’s method of agreement or method of difference as articulated in the logics of “most similar” or “most different” systems designs (Przeworski and Teune 1970; Mill 1838). Finally, a case selection rationale that is particularly applicable to the study of judicial performance in Mexico is that of selection on the dependent variable. Although conventional social science methods tend to disfavor selection on the dependent variable, the quality of within-case analysis ultimately matters more (Gerring and Seawright 2006). Moreover, Collier and Mahoney (1996) and Collier, Mahoney, and Seawright (2004) argue that selection bias may not be as significant an issue in case studies.⁵⁷ Of particular

⁵⁶ See Appendix E for a more extended discussion of non-methodological considerations in case selection, as well as other aspects of conducting fieldwork in Brazil and Mexico.

⁵⁷ The logic of my argument regarding the ability of qualitative research to overcome the non-independence of observations in subnational research is similar to Collier and Mahoney’s argument regarding the ability

relevance to judicial performance, especially state-level judicial performance, is their argument that selection on the dependent variable is a negligible concern when little is known about the dependent variable or research topic. Arguably, this is the case with the problem of explaining judicial change, especially at the subnational level. Thus, we could select a state that has achieved high levels of judicial performance or is widely recognized for its unusual accomplishments in this area, and within-case analysis in such a state would likely yield useful lessons regarding the source of judicial change.

An example of the conventional kind of case selection would be the selection of a “typical” state for this time period (typical in a non-statistical sense, i.e., having nothing to do with the typicality of the relationship between independent and dependent variable and the size of the residuals). For instance, in Mexico during this time frame, a “typical” case would be a PRI-dominated state with low or no political competitiveness. These states are Coahuila, Durango, Hidalgo, Oaxaca, Puebla, Quintana Roo, Tamaulipas, and Veracruz. An example of selection on dependent variable would be a state that has achieved high levels of judicial performance or is widely recognized for its rare and understudied accomplishments in this area. These states might include Aguascalientes, Baja California, Colima, México, Nuevo León, or Querétaro, all of which received the highest ranking (1, on a scale of 1-5) in commercial court performance for 2003 in the report by the Consejo Coordinador Financiero (2004).

Without disregarding these more conventional, qualitative options for case selection, the current study relies on recent literature on “nested analysis” (Coppedge 2005; Lieberman 2005) and quantitative tools for case selection (Gerring and Seawright

of qualitative research to overcome weaknesses conventionally associated with selecting cases on the dependent variable.

2007) to integrate the quantitative and qualitative analyses. Although many scholars have integrated quantitative and qualitative methods in an informal way (Martin 1992; Swank 2002; Beer 2003; Jepsen 2006; Hecock 2006), the more recent scholarship offers guidance on how to conduct this integration in a more explicit and systematic fashion. First, diagnostics of the results of the large-N analyses identify one state in each country that generates well-predicted or “typical” observations (“state-years”), and that maintains this typicality despite variation in key explanatory variables (Lieberman 2005). Subsequently, I select two additional states to complement the first, generating a set of three states in each country, for a total of six state-level case studies across the two countries. This last step of building a small-N research design around the nested, model-testing cases focuses on selecting states that exhibit variation on the key explanatory variables – electoral competition and ideology. That is, following the logic of “structured” or “controlled” comparisons (Collier 1993; Snyder 2001a), the small-N research designs construct trilogies of cases in each country that are representative of the main electoral and ideological dimensions of provincial party systems.⁵⁸

In Mexico, this trilogy seeks to capture (i) levels of electoral competition, and (ii) ideological change or continuity with respect to the authoritarian regime (non-ideological or centrist PRI hegemony). In practice, this amounts to selecting three states that identify three main categories of Mexican states: (1) non-competitive PRI continuity, (2) competitive, rightward, PRI-to-PAN transitions, and (3) competitive, leftward, PRI-to-PRD transitions. In Brazil, the trilogy also seeks to capture (i) levels of electoral

⁵⁸ This logic of case selection closely approximates a “most similar systems” (MSS) research design, but the primary emphasis is on matching cases according to variation on the key explanatory variables, not on other similarities structural characteristics. The underlying assumption is that by being states within the same country, the cases are comparable in many ways though perhaps not “most similar” in a strict sense.

competition, and (ii) ideological change or continuity with respect to the authoritarian regime. However, unlike Mexico's non-ideological authoritarianism, Brazil's authoritarian regime was a military government on the political right, with two officially sanctioned parties for most of that regime, and a post-transition ideological landscape that is not the relatively simple, centralized, tri-partite landscape that we see in Mexico. Rather, the Brazilian party system is much more decentralized, with multiple ideological positions and lower levels of institutionalization in many provincial party systems, evoking much more traditional, regional, personalist, and/or clientelist interests and practices. Thus, the cases in Brazil seek to capture variation in electoral competitiveness, ideological orientation, as well as variation in the institutionalization of local party systems. In practice, this amounts to selecting cases from three categories of states: (1) non-competitive, oligarchic states with traditional, conservative elites frequently linked ideologically to the military regime and territorially to the north or northeast of Brazil;⁵⁹ (2) competitive, leftward transitions to the PT (or a PT-based coalition), of which there are relatively few strong examples; and (3) competitive elections in more institutionalized settings, with power alternating among ideologically different parties, a phenomenon likely found in the south or southeast. The two steps of case selection – (i) nesting cases and (ii) building a small-N research design around the nested cases – are addressed in greater detail below.

Following Lieberman (2005), nested analysis involves sequencing quantitative and qualitative analyses so that the case studies are selected from the sample in the

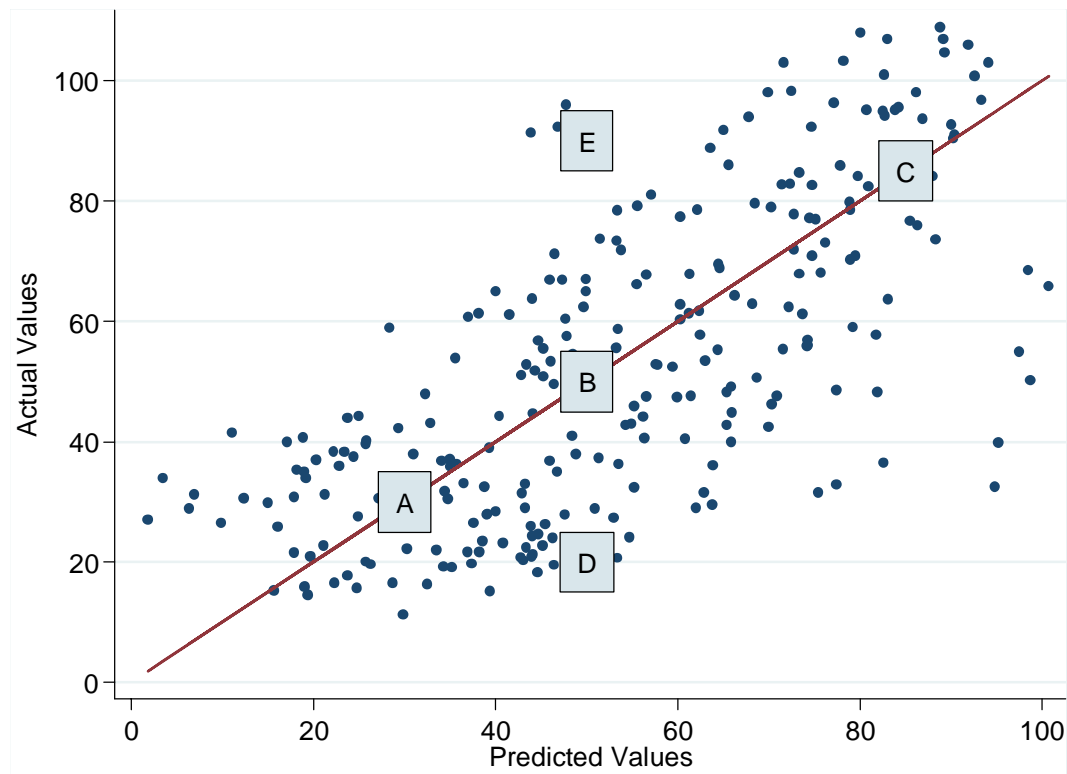
⁵⁹ Notably, the left, including the PT, has recently fared well in the northern and northeastern regions of Brazil. The PT won gubernatorial elections in 2002 in Piauí and in 2006 in Bahia, Paiuí, and Pará and Sergipe. The PDT dethroned traditional alliances from the governor's office for the first time in 2006 in Maranhão (though the TSE removed the PDT governor and restored the Sarney dynasty on April 17, 2009; see Chapter 7), and won the governor's race in 2002 and 2006 in Amapá (Nicolau/TSE Dataset).

quantitative analysis. Lieberman's suggested sequence of nested analysis is the following: (1) preliminary quantitative large-N analysis (LNA); (2) robustness-check of LNA; (3) case selection for small-N analysis (SNA); (4) qualitative SNA in the cases selected in step (3); and (5) repeat the steps in an iterative process, if necessary.

Once the LNA is complete and we are fairly confident in its results (steps 1 and 2 above), Lieberman suggests two types of SNA – model-testing SNA (Mt-SNA) and model-building SNA (Mb-SNA). In each type of qualitative analysis, he emphasizes the need to give special attention to two types of rival explanations. In the first strategy (Mt-SNA), Lieberman suggests identifying cases that are well-predicted by the statistical model. Well-predicted, low-residual, or statistically “typical” cases offer opportunities for within-case analysis that “provide support for, or clarification of, an existing causal hypothesis” (Gerring and Seawright 2006, 11).

If we were to plot actual values against predicted values, with a 45-degree line designating the perfect fit, these cases would be on or close to this line (see Figure 3.1, adapted from Lieberman, 445). In Figure 3.1, the typical cases would be cases A, B, and C.

Figure 3.1. Potential typical and atypical cases (adapted from Lieberman 2005).



After identifying which cases are well-predicted, we select from among this group cases that vary on the value of the principal independent variable(s) of interest. For example, if cases A, B, and C in Figure 1 are the most well-predicted cases, we would select the two that display the most variation on the key independent variable(s). As stated above, the statistical model is explaining these cases well and the goal is to identify the causal process in order to clarify or confirm hypotheses, so selecting on different values of the independent variable allows us to perform confirmatory case studies regarding the causal relationship between the IV and the DV, tracing the relationship from X to Y. In these cases, Lieberman also advises we should pay close attention to two rival explanations: (1) plausible alternative hypotheses that did not lend themselves easily to measurement across a large number of cases, so they could not be included in the

LNA; and (2) the causal sequence of events to ensure that there is temporal precedence between our independent variables and the dependent variable (Lieberman, 443-444).

The second strategy (Mb-SNA) selects poorly-predicted cases, i.e., cases that are off the 45-degree line (e.g., cases E and F in Figure 3.1). In contrast to Mt-SNA, after identifying this group of poorly-predicted cases, we select from among this group cases that vary on the value of the dependent variable, approximating Mill's method of difference. The model does not explain these observations well, suggesting a specification problem with the model. Selecting on a key IV would not be particularly informative since the analysis already told us these observations are not explained well by this variable. Conversely, selection on the DV maximizes the opportunity to identify alternative causal pathways and explanations. That is, aside from the variables specified in our model, what else explains the variation between cases E and F in Figure 3.1? In this strategy, closer attention is paid to improving measurements of important concepts, and to identifying concepts or explanations that were omitted from the original model but might play a significant role. Thus the name, “*model-building*” SNA.⁶⁰

Complementing Lieberman's work, Gerring and Seawright (2007) provide quantitative tools that make Lieberman's argument more explicit. Specifically, Gerring and Seawright specify diagnostics that can be performed on the quantitative model. These diagnostic tests are well-known in statistics, but they have only rarely been applied to the

⁶⁰ Three important features of nested case selection are worth emphasizing: (1) the process is not either-or, i.e., there are no clear, “black or white” distinctions; rather, as with other aspects of research design, choices, judgments, and tradeoffs inhere in the process; (2) statistical typicality is not a dichotomous concept or measure – it is a matter of degree; also, variation on key IVs or on the DV is a matter of degree; again, judgment and tradeoffs are central to the process; and (3) judgment is involved in deciding to what extent a case belongs in the Mt-SNA or Mb-SNA category. Stated otherwise, there is a little bit of art in the science of case selection, especially in noting where a case can be leveraged for its typicality and where it can be leveraged for its deviance or atypicality, alternately focusing on tracing *forward from variation in the IV* or *backward from variation in the DV*. Ultimately, the goal is a more systematic selection of cases that are either confirmatory or exploratory.

task of case selection and for the purpose of nested inference, integrating quantitative and qualitative methods. In short, Gerring and Seawright provide guidance on how to employ mathematical tools to identify well-predicted (low residual) and poorly-predicted (high residual) cases, cases that can then be examined for variation on the dependent variable or key independent variables, leading us closer to what Lieberman called Mt-SNA and Mb-SNA. By calculating “typicality” scores, i.e., the absolute value of residuals, therefore, we can begin to identify model-testing and model-building cases.

TSCS data offers a rich environment for the application of these quantitative tools for case selection. Lieberman, along with Gerring and Seawright, discuss the application of their methods to conventional regression analyses, where each observation corresponds to a case. Stated in the inverse, each case has a unique observation in the dataset. Therefore, each typical (on-the-line) or atypical (off-the-line) observation corresponds to one and only one case. In contrast, each case in TSCS data contributes more than one observation. In the Mexican and Brazilian data analyzed here, a Mexican state might contribute as many as 14 observations and a Brazilian state as many as 22. Consequently, diagnostics of TSCS data raise the possibility of identifying multiple typical and atypical observations from the *same* case. Where there is variation in the typicality of observations over time within a single case, this case may be a particularly promising candidate for SNA. In combination with extreme values and influence statistics (Gerring and Seawright 2007), typicality can be a powerful tool for case selection in TSCS data, offering opportunities for case selection that are not present in non-TSCS data. The following sections illustrate this process of integrating LNA, SNA, and TSCS data with actual data from the analysis of judicial spending in the Mexican and

Brazilian states. It should be noted that early in the research process, preliminary models in each country identified well-predicted, model-testing cases as Aguascalientes in Mexico and Acre in Brazil. The figures and discussion below report the latest data, using the models and specification reported in the empirical analysis in Chapters 4-7.

Aguascalientes remains a good model-testing case in Mexico. However, Rio Grande do Sul, rather than Acre, emerged in the latest models as the best model-testing case in Brazil.⁶¹

Table 3.1 reports the 30 most typical or well-predicted observations in Mexico, and Table 3.2 reports the 30 most typical or well-predicted observations in Brazil, using Model 9 from Chapter 4 for Mexico and Model 16 from Chapter 5 for Brazil (the 30 most atypical, worst-predicted observations, are listed for each country in tables in the Appendix C). Observations are listed vertically in order of typicality, with the most typical or well-predicted first. Following Lieberman, key independent variables – competition and ideology – are listed alongside typicality scores. From left to right, the columns identify the observation rank in terms of typicality, state-year, typicality score, margin of victory, effective number of parties (ENC), and two measures of ideology: (i) ordinal (-1 to 1, where -1 = left and 1 = right), and (ii) interval, based on Alcántara (2008) in Mexico and Power and Zucco (2009) in Brazil (1 to 10, where 1 = left and 10 = right).

In this table, we can see how each state generates more than one observation.

Hidalgo and Aguascalientes stand out because of their repeat appearances, listed six and

⁶¹ Fortunately, Rio Grande do Sul was also one of the selected cases, given that the case selection rationale (see section 3.3.3) sought to identify three states that varied on key political variables. This good fortune aside, the disclosure of the case selection rationale, and the changing location of some cases with respect to their typicality in the econometric models, is intended to show the iterative process and associated risks of conducting this kind of research. Further, reporting the current typicality of the six cases makes the research design more transparent and explicit.

five times, respectively. This repeat generation of typical observations by these two states indicates the states are “typical cases”, and therefore good candidates for in-depth analysis. However, Lieberman requires us to go one step further, identifying observations that also vary on the value of key independent variables. In this regard, Aguascalientes varies on measures of both competition and ideology whereas Hidalgo varies in terms of competition but shows little or no variation in terms of ideology. Thus, Aguascalientes emerges as the better candidate for Mt-SNA; it is both statistically typical and exhibits variation on key independent variables. Following the same logic in Brazil, Rio Grande do Sul (listed as “RG do Sul”) contributes three of the most typical observations, suggesting the state is a typical case. Further, these typical observations also evince variation on key independent variables. Thus, Rio Grande do Sul emerges as a good case for Mt-SNA in Brazil.

Table 3.1. 30 most typical observations in Mexico.

no.	state-year	typicality score	margin of victory	ENC	ideology ordinal	ideology interval
1	Michoacán-2006	0.04	0.04	2.82	-1	2.78
2	Baja California-2001	0.18	0.09	2.27	1	9.27
3	Aguascalientes-1997	0.20	0.55	1.69	0	6.94
4	Hidalgo-2006	0.26	0.21	2.65	0	6.31
5	Hidalgo-1995	0.35	0.73	1.52	0	6.82
6	Chihuahua-1999	0.36	0.08	2.30	0	6.94
7	Hidalgo-2000	0.54	0.21	2.44	0	6.09
8	Tlaxcala-1999	0.55	0.02	2.38	-1	2.68
9	Quintana Roo-1998	0.61	0.93	1.10	0	6.94
10	Sinaloa-2001	0.62	0.15	2.73	0	6.09
11	Baja California-2000	0.65	0.09	2.27	1	9.27
12	Sonora-2002	0.77	0.09	3.03	0	6.09
13	Hidalgo-2002	0.82	0.21	2.44	0	6.09
14	Queretaro-1999	0.97	0.05	2.65	1	8.94
15	Colima-1997	1.22	0.55	1.99	0	6.94
16	Hidalgo-1996	1.33	0.73	1.52	0	6.82
17	Aguascalientes-2001	1.52	0.15	2.31	1	9.27
18	Hidalgo-1997	1.72	0.73	1.52	0	6.94
19	Sonora-2001	1.82	0.09	3.03	0	6.09
20	Sinaloa-2002	1.89	0.15	2.73	0	6.09
21	Aguascalientes-1998	1.92	0.55	1.69	0	6.94
22	Aguascalientes-1995	1.95	0.55	1.69	0	6.82
23	Quintana Roo-2003	2.05	0.08	2.79	0	6.31
24	Veracruz-2001	2.23	0.22	2.86	0	6.09
25	Morelos-1998	2.43	0.41	2.22	0	6.94
26	Queretaro-1997	2.56	0.55	1.71	0	6.94
27	Veracruz-2000	2.57	0.22	2.86	0	6.09
28	Hidalgo-1998	2.71	0.73	1.52	0	6.94
29	Baja California Sur-2004	2.73	0.18	2.19	-1	2.78
30	Aguascalientes-2004	2.74	0.15	2.31	1	9.17

Table 3.2. 30 most typical observations in Brazil.

no.	state-year	typicality score	margin of victory	ENC	ideology ordinal	ideology interval
1	Espirito Santo-1999	0.0012	0.48	2.37	0.5	6.22
2	Pará-1997	0.0014	0.01	3.12	0.5	6.22
3	Santa Catarina-1995	0.0026	0.12	2.89	0	5.17
4	Goiás-1993	0.0030	0.22	2.28	0	5.17
5	Goiás-1989	0.0049	0.23	2.20	0	5.10
6	Paraíba-2002	0.0064	0.65	1.48	0.5	6.19
7	Paraíba-2001	0.0078	0.65	1.48	0.5	6.19
8	Paraná-1995	0.0081	0.16	2.22	-0.5	3.51
9	Tocantins-2004	0.0118	0.27	2.07	1	8.59
10	RG do Sul-1993	0.0123	0.03	3.41	-0.5	3.51
11	Alagoas-1996	0.0124	0.69	1.54	0	5.17
12	Minas Gerais-1997	0.0134	0.21	3.04	0.5	6.22
13	RG do Sul-1991	0.0188	0.03	3.41	-0.5	3.15
14	Tocantins-2000	0.0188	0.28	2.03	1	8.48
15	Pará-1990	0.0210	0.48	2.13	0	5.10
16	Tocantins-2003	0.0212	0.27	2.07	1	8.59
17	RG do Norte-1997	0.0249	0.14	2.32	0	5.76
18	Paraná-1998	0.0252	0.16	2.22	-0.5	3.24
19	Minas Gerais-2000	0.0256	0.06	2.71	0	5.76
20	Paraná-1994	0.0321	0.02	3.36	0	5.17
21	Amazonas-1997	0.0324	0.32	2.07	1	8.38
22	Piauí-2003	0.0334	0.07	2.20	-0.5	2.27
23	RG do Sul-1989	0.0341	0.21	3.05	0	5.10
24	Rio de Janeiro-2000	0.0364	0.13	2.77	-0.5	3.24
25	Piauí-1988	0.0399	0.02	2.10	0	5.10
26	Paraíba-1997	0.0408	0.03	2.44	0	5.76
27	São Paulo-2003	0.0427	0.06	3.34	0.5	6.30
28	Espirito Santo-2000	0.0431	0.48	2.37	0.5	6.22
29	Pará-1992	0.0435	0.05	2.72	0	5.10
30	Santa Catarina-1986	0.0452	0.01	2.03	1	8.51

Figure 3.2. Average typicality scores in Mexico (overall mean = 15.51).

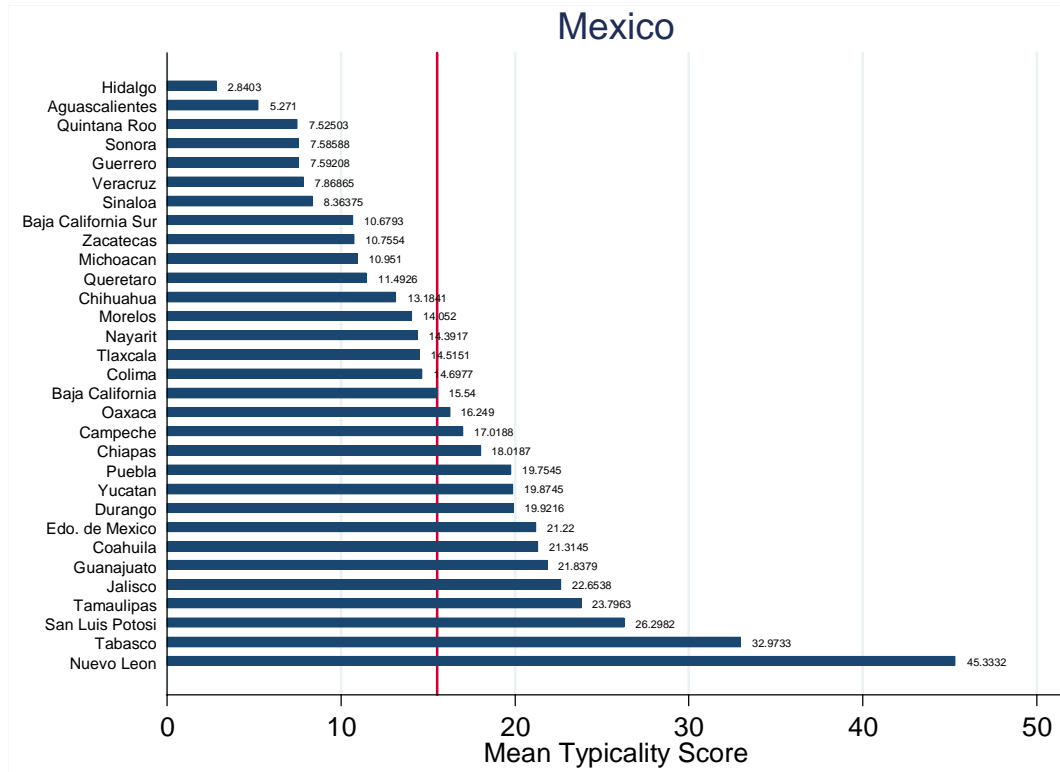


Figure 3.3. Average typicality scores in Brazil (overall mean = 0.51).

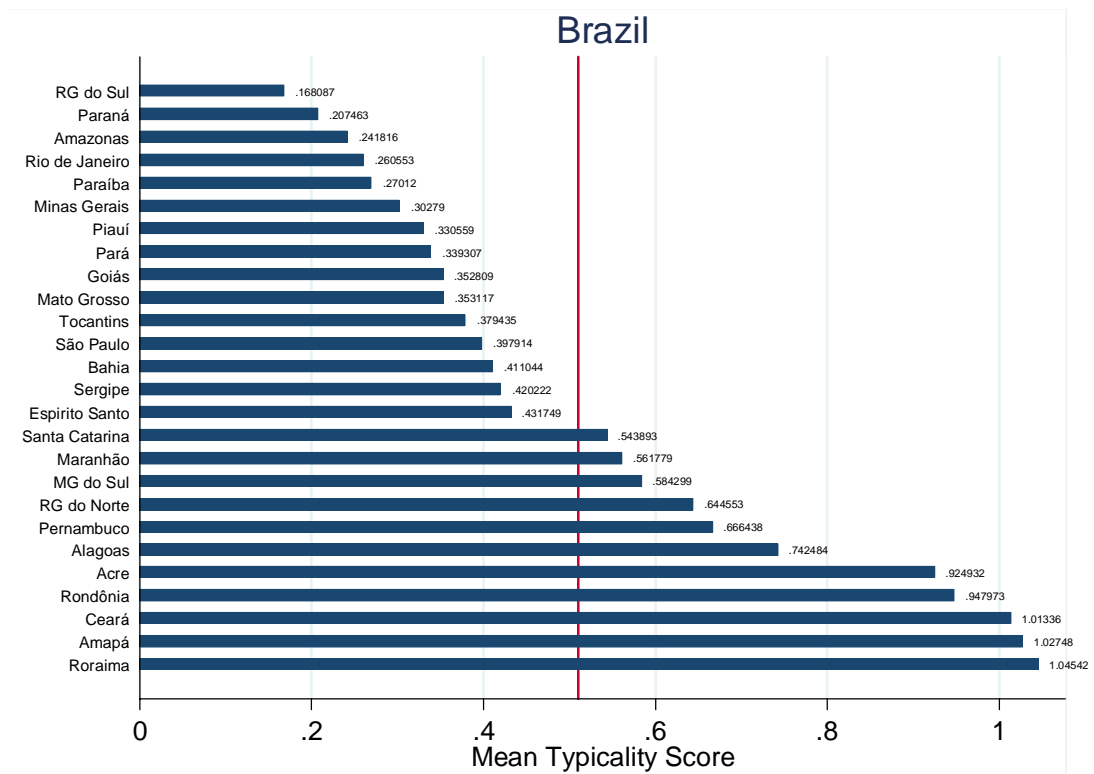


Figure 3.2 and Figure 3.3 graph average typicality scores for all Mexican states and Brazilian states, respectively. These graphs help to locate each state in terms of its overall statistical typicality (Appendix D includes maps of Mexico and Brazil depicting these typicality scores). As stated above, Aguascalientes emerged as a model-testing case in early, preliminary analyses that guided case selection, and remains one in current models reported here in Chapter 4. In Brazil, Acre emerged initially as a model-testing case, but is an atypical, high-residual case in the current models in Chapter 5 (see Figure 3.2 and listing of atypical observations in Appendix D). However, Rio Grande do Sul was and remains a good model-testing case (Figure 3.2 shows it having the lowest, i.e., “best”, average typicality score in the Brazilian analysis). Fortunately, Rio Grande do Sul was selected early on because of the variation it offered on key variables that contrasted

with Acre, so both states remain in the analysis. Acre now offers model-*building* insights.

Having selected a model-testing case in each country – Aguascalientes in Mexico and initially Acre (and now Rio Grande do Sul) in Brazil – I proceeded to build a small-N research design in each country around these cases. Following Lijphart (1971; 1975), Collier (1993), and Snyder (2001a; 2001b), as well as recent examples in Mexico (Snyder 2001a; Beer 2003; Hecock 2006; 2007), the selection of cases adheres to a logic of structured, controlled comparisons.⁶² The three states analyzed in each country express similar structural conditions but vary on key explanatory variables, constituting comparable systems, or small-N controlled comparisons.

With regard to the judicial sector, the three states in each country share critical factors relevant to the study of the judiciary, including a common legal tradition (civil law) and a shared legal culture. Most importantly, in terms of controlling for a common rival explanation of judicial change, all three states are subject to the same federal patterns of centrifugal, center-to-margin policy diffusion regarding court resources, institutional choice, and the judicial career. In this regard, the critical event in Mexico is

⁶² This kind of design is close to a most-similar-systems design (MSSD) (Smith 1876; Przeworski and Teune 1970; Gerring and Seawright 2008), but as Meckstroth (1975) points out, MSSD requires dichotomous values on the matching and non-matching variables. This is not the case here, though Meckstroth's standard may be "too exacting" in the same way as Mill and Durkheim's objections to the use of the method of agreement or the method of difference in the social sciences (Hall 2003, 380; citing Lijphart 1971, 688, and Smelser 1976, 62, 141). Notably, even Snyder (2001a), in what is the most prominent recent study of this "structured", "focused", or "controlled" comparison, does not have perfectly comparable cases. His cases are four states in southern Mexico, selected for similarity across socioeconomic features: Chiapas, Guerrero, Oaxaca, and Puebla. Puebla and Oaxaca are more alike in terms of income per capita, as are Chiapas and Guerrero, but Puebla is much more industrialized than the other three. Cornelius (1999, 14) distinguishes Puebla as more "modern", and labels the others as more "politically primitive". Moreover, indigenous populations vary across the four states. Ultimately, these imperfections are not fatal. The main idea is that to "compare is to control" (Lijphart 1971; see Collier 1993 for additional comments on small-N designs), and that researchers should simply attempt to increase the degree of control and be explicit in how this is being accomplished. The selection of cases at the sub-national level exerts a substantial degree of control that is absent in cross-national studies, and the selection here seeks the widest variation in electoral competition and ideology, seeking three cases that best represent the variety of provincial party systems.

President Zedillo's federal reform of December 1994. Although this reform was conducted quickly in the first month of President Ernesto Zedillo's administration, the initial reform and subsequent reforms in 1996, as well as the accompanying debate over these reforms, alerted subnational judiciaries to the priority of policy change in the judicial sector. Similarly, the crucial event in Brazil is the national judicial reform process that began in 1992. Although the reform was not completed and implemented until 2004, the debate maintained a high national profile in academic and policy circles for 12 years until a reform was finally approved in 2004 (Sadek 1998; EC 45/2004).⁶³ In each country, all states were exposed equally to the timing and content of the national reforms and accompanying debate, but these reforms and debates filtered differently through very disparate local political conditions. The selection of cases, therefore, focuses on states representing the main kind of variation on these local electoral-ideological conditions associated with provincial party systems.

In Mexico, as stated earlier, the crucial political factor is change or continuity with respect to the former single-party regime of the PRI. In Brazil, the authoritarian regime was not in the mold of Mexico's single, dominant party, or PRI hegemony, characterized by its corporatist and clientelist structures, and a largely non-ideological or centrist program. Rather, Brazil's brand of authoritarianism was a military regime with a conservative ideology. In Brazil, therefore, we are looking for changes in electoral competition, but the continuity of non-competitive systems is more often tied to the political right rather than the center, and competitive settings are more often linked to the emergence of the left, centrist parties, or at least party alternation. In short, the case

⁶³ While the reform languished for most of those years, the impetus for reform reached a crescendo after the first PT government entered office in January of 2003 (see Chapter 7).

selection depends on identifying the authoritarian baseline condition in each country – associated with the PRI in Mexico and with the pro-military ARENA in Brazil – and identifying the most meaningful type of movement away from these authoritarian baselines.

In Brazil, the central political phenomenon of the last three decades was the gradual opening of the military regime beginning in the late 1970s and the slow transition to democracy. The exact date of Brazil's transition is unclear given the slow pace of this opening and the continuity of conservative elements in the political branches, but most observers agree that 1989 is the more analytically conservative date, given that the new constitution was not drafted and approved until 1988 and the first direct elections for president were not held until 1989. In Mexico, the transition is clearer. After 71 years of single-dominant-party rule under the PRI, the right-of-center PAN won the presidency in 2000. Despite the fact opposition parties had been winning municipal and state elections before this year, there is broad consensus that 2000 marked the end of an authoritarian era in Mexico. Thus, in both countries, there was an authoritarian baseline condition, and the last three decades have witnessed movement away from that baseline.

Importantly, both Brazil and Mexico shared non-competitiveness as part of their authoritarian baselines. That is, the PRI was hegemonic at the national level and only lost its first governorship in 1989. Even after 1989, PRI margins of victory were high and the PRI continued to dominate the legislatures in many states. In Brazil, the military regime officialized a two-party system – with the pro-military ARENA on one side and a state-sanctioned opposition party, MDB, on the other. Despite the existence of an opposition party, ARENA dominated most governorships and state legislatures through the 1970s.

Even where MDB candidates were successful, the *de facto* power of the military was never far out of sight, so competition was in a sense artificial. Thus, both authoritarian baselines shared the feature of low electoral competition. However, the ideological location of this baseline was different in each country. In Mexico, the authoritarian regime was located in the center of a left-right ideological spectrum. In Brazil, the authoritarian regime was located on the right. Thus, both electoral competition and ideology inform which three states best represent the variety of types of subnational electoral contexts in each country.

In Mexico, Aguascalientes represents an instance of the competitive rise of the PAN, and therefore a rightward PRI-to-PAN transition. Following PAN victories in the state capital and legislature in 1995, and then in the 1998 and 2004 governor's races, Aguascalientes is a PAN success story.⁶⁴ In contrast, Michoacán offers an example of the rise of the PRD, and therefore a leftward PRI-to-PRD transition. Michoacán has a solid history of progressive, mass-based politics, principally in agrarian reform, dating back to the post-revolution governorship of Lázaro Cárdenas (1928-1932), who later became president. Indeed, the "allegedly socialist" character of the Cárdenas presidency is cited as one of the triggers for the formation of the rightist PAN (Mizrahi 2003, 17; see also, Shirk 2005, 55-56). Lázaro Cárdenas's son, Cuauhtémoc Cárdenas, governed the state from 1980 to 1986. The younger Cárdenas pushed for greater democratization of the PRI and helped found the PRD in 1989 after a failed run at the presidency. Cuauhtémoc Cardenas's son, Lázaro Cárdenas Batel, governed the state from 2002-2008, and Leonel Godoy Rangel, Secretary of State for both Cuauhtémoc Cárdenas and Lázaro Cárdenas Batel, succeeded Cárdenas Batel in 2008, giving the PRD two consecutive

⁶⁴ The PRI regained the state capital in 2007 and a narrow majority in the legislature in 2008.

administrations despite the fact they had never won the local executive prior to 2002. Thus, Michoacán is a PRD success story.

Contrasting with both Aguascalientes and Michoacán, Hidalgo is an instance of continuing PRI dominance. As of 2009, the PRI had not lost the governorship in nearly 80 years. Moreover, through 1996, the PRI held at least 70% of the seats in the state legislature. From 1996 to 2005, the PRI commanded between 62 and 72 per cent of legislative seats. As of May 2008, the PRI's majority for the 2008-2011 legislature stood at 63% (73% if electoral allies from Nueva Alianza are considered).⁶⁵ Thus, Hidalgo is one of the most politically traditional states in Mexico. In this sense, Hidalgo is a "typical" case historically in Mexico, representative of the broader population of states with single-party dominance so characteristic of the PRI's national trajectory until 2000.

The selection of three Brazilian states for in-depth qualitative analysis follows a similar sequence. Having selected Acre as a statistically "typical", model-testing case, the next step was to diagnose the nature of electoral competition and ideological orientation in Acre. In this regard, Acre is a state that exhibits rising electoral competition since the mid-1990s, and it is also a state in which the leftist PT has emerged as a dominant political force. Thus, Acre has recently become a PT stronghold, and therefore an example of the competitive rise of the left. Following several conservative administrations with traditional political elites sympathetic to the military regime, the PT

⁶⁵ In the local elections of February 17, 2008, the PRI candidates won every single one of the 18 plurality district. The PRI gained one additional seat in the proportional representation calculations. In 12 of the 18 majority districts, the PRI had formed a coalition with Nueva Alianza, a new party formed in 2005, and there were three additional Nueva Alianza seats from the PR calculations. Assuming that Nueva Alianza votes with the PRI in the Hidalgo legislature, the PRI-Nueva Alianza majority consists of 22 of 30 legislators (IEE-Hidalgo 2008; *El Universal* 2008a; 2008b). At the federal level, Nueva Alianza is a small party with only nine representatives in the Chamber of Deputies (lower house). For comparison, the PAN has 206 deputies, the PRD has 126, and the PRI has 106 in the 500-member body (Cámara de Diputados 2009).

won the governor's office in the 1998 elections and has not lost since. Indeed, after winning the mayor's office in the state capital (Rio Branco) in 1992, the PT won the governor's office in 1998, 2002, and 2006, generating the only case of PT continuity in the Brazilian states between 1998 and 2010. Jorge Viana, the PT mayor of Rio Branco from 1993-1996, became the first PT governor in the state (1999-2002), and then repeated as governor from 2003-2006. Since then, Binho Marques showed the PT can win with a different candidate, demonstrating that the party's strength in the state was not encumbered by personalist ties to Viana.⁶⁶ Thus, Acre represents the competitive rise of the left in Brazil's post-authoritarian period.

Rio Grande do Sul, in contrast, has a longer history of left-right competition. Rio Grande do Sul has witnessed a perfect alternation in the governor's office since 1982, with no single party dominating the others, giving the state an aura of competitive centrism. Indeed, of the four parties that competed in the first open gubernatorial elections allowed by the military in 1982 (PT, PDT, PMDB, and PDS), all four have been elected to govern the state for at least one four-year administration: PDS (1983-1986), PMDB (1987-1990), PDT (1991-1994), PMDB (1995-1998), PT (1999-2002), and PMDB (2003-2006). The PMDB has held the governor's office three times, but none of these administrations have been consecutive. Most recently, the 2006 election was very closely fought; the PT and PMDB were locked in competition and it looked like the PMDB might repeat an administration for the first time or the PT might return for its second administration. However, largely due to the split between the PT and PMDB, the PSDB was able to gain power (becoming the fifth party to reach the governor's office

⁶⁶ Marques was Viana's secretary of education during the municipal administration of Rio Branco (1993-1996), and was later Viana's deputy in the state administration.

since 1982) (Interview 110). Thus, for more than a quarter century – the entire post-authoritarian period – Rio Grande do Sul, despite an initial phase of ARENA continuity under the guise of the PDS, has seen two to three parties competing effectively at any given time. Additionally, parties and the party system are more modern and institutionalized in Rio Grande do Sul. It is worth emphasizing that, according to Aaron Schneider, the alternation seen in Rio Grande do Sul is “not an indication of poor institutionalization either of parties or of succession more generally, in terms of a political elite capable of transferring power. Rather, the state is marked quite clearly by center-left and center-right groupings, and politics essentially reduces down to a stable two-way fight between blocks on the left and on the right,” generating the competitive centrism that I referred to earlier.⁶⁷

Finally, Maranhão represents the continuity of traditional politics and the dominance of parties sympathetic to the authoritarian regime. State politics have been controlled for 40 years by the family of José Sarney, who was president of the pro-military PDS until only nine months before becoming the first democratic president of the country in 20 years, and a crucial piece of the conservative control over the transition to democracy in the 1980s (Mainwaring, Meneguello, and Power 2000a; 2000b, 177; Meneguello 1998).⁶⁸ Sarney, therefore, fit into the mold of traditional Brazilian strongmen or “colonels” (*coroneis*), anchoring Maranhão’s politics just as other powerful local elites anchored and perpetuated *coronelismo* in other parts of Brazil, especially the

⁶⁷ Personal communication between Ben Goldfrank and Aaron Schneider. Thanks to both for their help in thinking about Brazilian politics, especially in Rio Grande do Sul.

⁶⁸ Sarney’s political roots prior to 1964 were in the right-wing UDN, which went on to support the coup and military regime (Schmitt, 26-27, 35). Two prominent Latin Americanists refer to Sarney as a “pillar of the military regime” (Skidmore and Smith 2005, 176).

North and Northeast.⁶⁹ Traditional politics, however, dominated Maranhão well before Sarney, under Victorino Freire. In a twist of historical irony, in the elections of 1965 (one year after the military coup, often termed a “revolution” by conservatives), Sarney presented himself as the liberator of Maranhão, freeing the state from the grip of *vitorinismo*. This irony is not lost on many local observers, who see Sarney’s local reign since the 1960s as a continuation of Freire’s stranglehold on power; that is, *vitorinismo* lives on in *sarneísmo* in an example of the continuity of authoritarianism clothed as the arrival of liberation – of traditional, family-based politics repackaging itself (Cabral de Costa 2006a; 2006b).⁷⁰ Gastal Grill (2007, 20-22) notes that the majority of political elites in Maranhão come from traditional, landed families that were established prior to the 1930s, suggesting the despite some recent shifts in electoral configurations, local politics reflect the “wardrobe changes” described by Cabral de Costa, where a deep continuity lurks behinds apparent and superficial ruptures.⁷¹ The possibility of changing this arrangement appeared to arrive in 2006 with the victory of the PDT in the governor’s office. The extent to which this turnover marks meaningful change is questionable given that the new PDT governor, Jackson Lago, is, in the eyes of many local observers, a member of insular local elites and a former member of Sarney-based coalitions (Interview 152). In any case, on April 17, 2009, Lago was removed from office by the

⁶⁹ Antônio Carlos Magalhães (ACM) did in Bahia, Fernando Collor de Melo did in Alagoas, and Ciro Gomes did in Ceará (see Cabral de Costa 2006a; 2006b; Villaça and Cavalcanti 2006).

⁷⁰ In late 2007, the main avenue that circle the center of the capital of São Luis was named Victorino Freire in one segment, then became José Sarney, and circled back to become Victorino Freire, offering a concrete reminder of the continuity between the two. The metaphor of authoritarianism “reclathing” itself as democracy is not my own. See Costa Silva: “Desde o início da saga dos homens sobre a Terra, para fingir que se foram da cena, o domínio exclusivo e a arbitrariedade na política, a exploração econômica, a intolerância intelectual e o autoritarismo familiar têm se vestido e ataviado com novas roupas. Mas a tesoura que as corta e a agulha que as cose parecem ou são as mesmas” (Cabral de Costa 2006b, 11).

⁷¹ In the original Portuguese, political patterns reflect “continuidades em processos ou momentos que aparentam rupturas” (Gastal Grill, 3).

TSE. In a second yet telling irony of Maranhão's politics, Roseana Sarney – now under the partisan umbrella of the PMDB –replaced Lago in the governor's office since she was runner-up in the 2006 elections. Thus, the Sarney dynasty remains in place in Maranhão. In this regard, the persistence of traditional, oligarchic politics reminiscent of the authoritarian era makes Maranhão the Brazilian equivalent of Hidalgo in Mexico.

It is worth noting that the provincial PMDB is effectively a conservative party of the right-wing, conservative elites alongside the PDS and PFL/DEM. José Sarney turned from the PDS to the PMDB in 1985 out of political convenience because in order to be the vice-presidential candidate on the same ticket with Tancredo Neves Sarney had to belong to the same party as Neves. Sarney continues under the PMDB, as a federal senator for the state of Amapá. Roseana Sarney, meanwhile, operated under the rightist PFL throughout her political career – during two terms as governor of Maranhão (1995-1998 and 1999-2002) and as a federal senator for the state. However, after being forced out of the PFL for supporting Lula's PT-based, national coalition, she converted to her father's PMDB during her term as Senator, mirroring her father's political migration out of political necessity in 1985. Despite the fact ARENA, PDS, and PFL/DEM, along with the state's provincial brand of the PMDB, could be located on the right of the political spectrum, Maranhão's politics are more accurately described as controlled by traditional local elites (see Hagopian 1996) rather than programmatically right-wing in a consistently ideological sense. That is, Maranhão's party system is less modernized and institutionalized, and politics are marked by an oligarchic brand of clientelism and opportunism.

To summarize the rationale for case selection, Figure 3.4 below offers a 2x3 table

that locates the three states in each country in relation to the two key political dimensions – electoral competition and ideology. Ideology appears along the top, distinguishing between left, center, and right, and electoral competition appears along the left side, identifying low and high levels of competition. In Brazil, the authoritarian baseline was in box 6, marked by low electoral competition and right-wing sympathies. Movement away from this baseline leads us to boxes 1 and 2, where there are gains in competition and also movement leftward along the ideology axis. Working backwards and starting with the model-testing case of Acre, in box 1, I then filled in box 2 with Rio Grande do Sul and box 6 with Maranhão. In Mexico, the authoritarian baseline was in box 5. Movement away from this baseline leads us to boxes 1 and 3, where there are gains in competition and also movement away from the ideological center. Working backwards again and beginning with the model-testing case of Aguascalientes, which fills box 3, I then filled box 1 with Michoacán and box 5 with Hidalgo.

Figure 3.4. 2 X 3 table showing case selection.

		Ideology		
		Left	Center	Right
Competition	High	Michoacán Acre 1	Rio Grande do Sul 2	Aguascalientes 3
	Low	 4	Hidalgo 5 <i>authoritarian baseline in Mexico</i>	Maranhão 6 <i>authoritarian baseline in Brazil</i>

In sum, a nested, model-testing case anchors a small-N, structured and controlled research design in both Brazil and Mexico. For any given year, no case is a perfect, statistical fit in each country, but each case differs around key variables. The trilogy of selected cases in each country best represents the variety of provincial party systems in both the Brazilian and Mexican states. In Brazil, Maranhão represents the non-competitive continuity of traditional, conservative, and elite-dominated politics; Acre represents a right-to-left trajectory; and Rio Grande do Sul represents competitive, left-right alternation. In Mexico, Hidalgo represents PRI continuity; Aguascalientes represents a rightward PRI-to-PAN transition; and Michoacán represents a leftward PRI-to-PRD transition. Collectively, each set of three states increases the analytic purchase regarding the influence of electoral competition and programmatic-ideological commitments on judicial change, both longitudinally within these three states, and spatially across the three states. This analytic leverage promises to maximize the validity and generalizability of conclusions for other states within each country, but the combination of small-N research designs in two different countries also enhances the

validity and generalizability of conclusions for states in still other countries.

3.3.3. Small-N Methods: Process Tracing

Having completed the econometric analysis and case selection, the qualitative portion of the analysis asks, how and why have these different electoral and ideological conditions shaped local courts? In contrast to the cross-state analysis and the testing of hypotheses using statistical techniques, the emphasis here is on the tracing of causal processes, focusing on mechanisms, motivations, timing, sequencing, and complex or heterogeneous causal relationships (Pierson 2000; 2004; Ragin 2000; Hall 2003; Brady and Collier 2004; Bennett and George 2005).

In terms of dependent variables, the qualitative phase of analysis examines judicial spending but also extends to additional dimensions of court strength, highlighting the administrative capacity of local courts. The closer examination of judicial spending creates a bridge with the quantitative analysis, which analyzed the same variable. However, in both Mexico and Brazil, the qualitative analysis unpacks spending to an additional degree by looking at aspects of budgetary autonomy and accountability. Beyond judicial spending, the qualitative analysis shifts to focus on administrative capacity. Due to the different constitutional arrangements and styles of judicial federalism in Brazil and Mexico, however, the additional dependent variables under the rubric of “administrative capacity” are different in each country. In Mexico, institutional design is highly decentralized, and the primary advance in many states is the formation of judicial councils beginning as early as 1988, before the federal judicial council was formed in 1994. Notably, it is not just the formation of the council that matters. Rather, the analysis highlights three dimensions of judicial councils: (i) power or authority, (ii)

composition, and (iii) physical structure. The analysis in Mexico also examines career structure. In Brazil, institutional design and the judicial career are highly centralized, especially since the 1988 constitution and the state constitutions that were reformed in 1989 to match the federal charter. The degree of centralization increased in 2004 with the creation of a single, national judicial council that is in charge of overseeing the administration of the entire judicial apparatus – constitutional courts, federal courts, and state courts. Despite this growing institutional uniformity, there remains wide variation in administrative capacity. Indeed, one prominent observer of Brazilian courts notes that administratively, state courts are highly divergent, constituting a “multiform judiciary” (Falcão 2006; “*o multiplo judiciário*”). The main variation in administrative capacity involves budgetary matters, staffing decisions, and physical and personnel resources. The budgetary issues are already described above, but the qualitative analysis examines outcomes in staffing (measured as judges per capita) and the physical resources of the courts (measures as physical infrastructure).

While the differences between Brazil and Mexico might lead one to conclude that subnational phenomena or simply not comparable across the two countries, I suggest just the opposite. If the analysis finds similar causal pathways across the two countries – despite differences in party systems, styles of authoritarianisms, timing and styles of transitions to democracy, and styles of judicial federalism – then the inter-national differences greatly strengthen the conclusions.

The qualitative, process tracing approach in each state, what Hall (2003) calls “systematic process analysis”, draws on three streams of evidence: (i) interviews, (ii) archival evidence, and (iii) direct observation. First, I conducted 115 personal, semi-

structured interviews with judges and other authorities on law and courts, distributed in the six state case studies as follows: Acre (14), Maranhão (18), and Rio Grande do Sul (23) in Brazil; Aguascalientes (23), Hidalgo (20), and Michoacán (17) in Mexico.

Interview participants consisted of first- and second-instance judges, lawyers, members of judicial councils (these could be judges or politicians, or other authorities selected for their judicial expertise), court staff, as well as politicians (governors and legislators, especially legislators on key committees affecting the judiciary), law professors, and other local experts. Notably, these interviews included eight current or former state courts presidents, as well as two current or former governors. These participants could be classified as legal “specialists”, “experts”, or “elites”. In order to safeguard anonymity, a random number between 1 and 200 was generated and assigned to each interview. All interviews are referenced only by that number. Several participants gave multiple interviews over the course of time in the field, as well as continued contact via electronic mail. Thus, while the total number of participants is 115, the number of separate interviews conducted was greater (see Appendix E for more information regarding fieldwork, including interviews and participant selection).

Archival, textual, or documentary evidence covered legislative and judicial documents, including state constitutions, administrative regulations (*leyes orgánicas* in Mexico), legislative bills (*iniciativas*), finalized laws, voting records, annual reports, budgetary statements, litigation records, and journalist accounts. Direct observations included multiple visits to courthouses, including first-instance courts (*fórum* or *juizado* in Brazil, and *juzgado* in Mexico), state supreme courts (*Tribunal de Justiça* in Brazil, and *Tribunal Superior* or *Supremo Tribunal de Justicia* in Mexico), as well as other local

courts (small claims, fiscal courts, and labor courts), federal courts, and legislative and executive offices. Additionally, I interacted multiple times with judges and other interview participants in multiple formal and informal settings, including dinners, official events (swearing-in ceremonies, “state-of-the-state” and “state-of-the-courts” addresses), and associational meetings.

Relying on these sources, I construct an analytic narrative that traces the process of judicial change in each state (Bennett and George 2005; Gerring 2007). Following Collier, Brady and Seawright (2004) and Gerring (2007, 29-33), each case study is therefore composed not of a single observation, but rather of a series of observations or evidentiary markers along a longitudinal causal process, drawing not on the correlation-based inferential logic of “data set observations” (DSOs), but rather on the process-based inferential logic of “causal process observations” (CPOs) (Brady and Collier 2004). These “causal chains” are judged against the “causal patterns” (Hall 2003) specified from theoretical expectations. Specific attention focuses on the mechanisms and motivations activating or initiating a causal process, and the sequence of actions or events within that causal process, comparing expected causal patterns with the observed process. This process tracing identifies key moments, actors, and strategies, clarifying both mechanisms and motivations that explain significant changes over time and help adjudicate among complementary, competing, or inconsistent causal logics. In this regard, the approach employed here closely approximates what Falleti (2006) calls “theory-guided process tracing” (TGPT). Falleti joins Hall (2003) and others (Bennett and George 2005; Bennett 2008) who highlight the theory-building value of this kind of approach and of its strengths in small-N research.

3.4. Conclusion: Present Strengths and Future Promise of Research Design

The research design adopts a subnational level of analysis, extends nested analysis to time-series cross-section (TSCS) data, demonstrating the additional opportunities for case selection offered by this kind of data structure, and integrates large-N analyses of this data with small-N, controlled comparisons in two countries. Summarizing, the research design might be described as multi-method, subnational nested and most similar' analysis in multiple countries. This rather awkward phrase captures the advantages of (i) a subnational level of analysis; (ii) mixed methods research; (iii) nested case selection combined with controlled comparisons; and (iv) subnational research across two different countries. The chapter title reframes this as scaled-down, cross-border nesting.

Aside from discussing the methods employed in the current research, however, this chapter also highlights concerns in current methodological debates regarding both subnational and qualitative research: (1) beyond combining intra- and inter-national research, i.e., subnational data from non-adjointing states in different countries, this research design notes how qualitative, process-based analysis can be leveraged to overcome the costs associated with the interdependence of subnational observations; (2) the research design also identifies understudied opportunities for case selection offered by TSCS datasets, drawing on within-case variation in typicality over time, i.e., typical and atypical "state-years" from within the same state; and (3) the design notes the advantage of combining different strategies of case selection, namely, identifying promising nested cases and then building structured qualitative research designs around these cases.

Beyond contributing to these methodological debates, the research design also suggests fruitful methodological avenues for future research. Commenting on Linz and de Miguel's (1966) study of backward regions in Spain and Italy, Lijphart (1971, 689) emphasizes "a particularly promising approach may be the combination of intranation and international comparison". Offering several specific examples of the strengths of this combination, Snyder (2001, 96-97) recalls Lipset's (1950) work on southern Canadian provinces and North Dakota in order to understand the origins of agrarian socialism, Linz and de Miguel's study mentioned by Lijphart, O'Donnell's (1973, 21) use of a "cross-modern" approach, comparing developed regions of Argentina and Brazil, and Linz's (1986) study of Basque regions in northeastern Spain and southwestern France in order to understand variation in ethnic identification. Combining intra-national and inter-national data and cases can be a fruitful path for understanding other major phenomena, including the persistence in new democracies of subnational enclaves of authoritarianism, environmental degradation, public health policies (including HIV/AIDS and nutrition), education reform, and a variety of topics in administrative and institutional reform and performance, including judicial politics.

Extensions of the current study might pursue regional comparisons across Mexico and Brazil. Small-N, controlled comparisons across southern Mexico and northern or northeastern Brazil are especially promising due to greater similarities in levels of development across these two regions in *different* countries than among these regions and other regions within the same country. For instance, the Oaxaca in southern Mexico is a poor state with a large indigenous population and communal practices that are distinct from many other states. Depending on the question being asked, it might make more

analytical sense to compare this state with one of the poorer states in the Brazilian Amazon or northeastern region than to compare Oaxaca with a more developed state in Mexico that does not have a strong indigenous presence. Similarly, it might make more sense to compare states in Brazil's industrial south or southeast with states in Mexico's industrial center or north. Pushing these examples further, it might make more sense to compare the resilient and traditional brand of politics in Hidalgo or Oaxaca with the resiliently traditional brand of politics in the states of Alagoas or Maranhão in northern Brazil. In addition to the current study, other research that combines intranational and international comparisons include Jepsen (2006), Armesto (forthcoming 2009), and Giraudy (2009). By drawing data and cases from two different countries to generate causal inferences, these inferences are more likely to teach us something interesting about subnational units in still other countries, and possibly teach us lessons about whole nations. That is, the lessons generated at one level of analysis (subnational) are more likely to apply at a higher level of analysis (national) (Snyder 2001b, 103).

Part II. Empirical Analysis

Poder que não tem recursos orçamentários para sua manutenção, crescimento, e remuneração digna dos braços trabalhadores que o sustentam, não é independente.
Judge Adair Longuini, Acre⁷²

O orçamento é a vida do judiciário.
Judge Laudivon Nogueira, Acre⁷³

Introduction

Part II constitutes the core empirical analysis of the dissertation. Chapters 4 and 5 offer time-series, cross-section examinations of judicial strength – with judicial spending per capita as the dependent variable – in Mexico and Brazil, respectively. Mexico is analyzed first because the results are clear and straightforward, facilitating the interpretation of results in Brazil (see Chapter 3 for discussion of statistical methods). Chapters 6 and 7 build on the quantitative analysis by offering small-N studies of court strength. Chapter 6 examines the process of judicial change in three Mexican states: Aguascalientes, Michoacán, and Hidalgo. Chapter 7 examines the same process in three Brazilian states: Acre, Rio Grande do Sul, and Maranhão (see Chapter 3 for case selection rationale). First, the section below introduces judicial spending as a proxy for court strength.

Judicial Spending and Court Strength

While judicial spending is an imperfect measure for court performance, the U.S. and comparative literature on judicial politics recognizes court budgets as a critical

⁷² Quote from Longuini (2003, 12). Translation: “A branch of government that does not have the budgetary resources for its own maintenance, growth, and dignified remuneration of the employees that sustain it, is not independent.” As of December 2007, Longuini was promoted to *desembargador* and joined the TJ in Acre.

⁷³ Author interview. Translation: “The budget is the life of the judiciary.”

component of judicial strength and independence. Systematic studies in Latin America, either quantitative or qualitative, of the effect of spending on different components of performance (e.g. access, efficiency, and independence) are lacking. However, the logical relationship between financial resources and institutional performance allows us to deduce that court budgets determine the proper functioning of the judicial branch. In addition to this deductive argument for the importance of judicial spending, the evidence from studies in the U.S. supports the expectation that weak court budgets undermine judicial performance. In short, if studies in the U.S. show that judicial spending is important for the performance of the courts, then the autonomy and performance of courts in newer and poorer democracies is in greater jeopardy due to the heightened political vulnerability of court budgets in these countries. Finally, existing research in both Brazil and Mexico identifies judicial spending as a critical determinant of judicial performance, particularly with regards to independence.

In the U.S. literature, Alexander Hamilton's *Federalist No. 79* notes that "[n]ext to permanency in office, nothing can contribute more to the independence of judges than a fixed provision for their support."⁷⁴ More than two hundred years after Hamilton's words, judicial budgets in the U.S. are generally secure at the federal level, but as of 2003 only one state (West Virginia) had laws to protect the judicial budget from reductions by the legislature (Douglas and Hartley 2003, 453 n.2). It should be noted,

⁷⁴ The importance of court budgets is also contemplated in Art. III, sec. 1 of the U.S. Constitution, which establishes that judges shall "receive for their services a compensation which shall not be diminished". Sufficient budgetary resources provide judges with secure salaries, thereby avoiding a very concrete form of judicial *dependence*. Funding also allows the judiciary to fill vacancies, purchase equipment, implement programs and reforms, and generally provide a better administration of justice. In short, adequate budgets allow the judiciary to perform effectively as the third branch of government. Thus, Jackson (1999) lists adequate resources as one of six conditions for judicial independence, the American Bar Association (ABA 1997, ii-iii) lists "[an] adequate appropriation from congress" as a condition for judicial independence, and the American Judicature Society (AJS 2005) adds that "adequate funding is critical to preserving an independent judiciary".

however, that even stable judicial budgets – neither growing nor shrinking – do not account for the corrosive effect of inflation, which reduces the real value of similar allocations over time (Domingo 2000, 715). Moreover, recent state-level scholarship in the U.S. demonstrates that “assaults on judicial independence” include “punitive cuts” in judicial budgets (Douglas and Hartley, 441; Kaufman 1999; Bermant and Wheeler 1995). Douglas and Hartley’s 2003 study of court administrators and both executive and legislative budget officers found that both governors and state legislatures leverage budgetary decisions against the judiciary in order to influence the courts (448-50). Similarly, a position paper by the Conference of State Court Administrators (COSCA 2003, 8) identifies the sometimes punitive function of the power of the purse. Thus, court budgets appear to be relatively secure at the federal level in the U.S., but are still politicized and vulnerable in the states. Moreover, policymakers recognize this vulnerability and target court budgets as a way of constraining the courts.

Judicial budgets are even more vulnerable and of greater importance to court strength in newer and poorer democracies. In Latin America, where transitions to democracy took place in the last 20-30 years, judicial spending is highly politicized. A United Nations report on democracy in the region notes the allocation of financial resources to courts as one of the “outstanding issues” in the administration of justice (UNDP 2004, 104). Similarly, Pásara (2004, 18) identifies sufficient financial resources as one of the five principal themes of judicial reform in the region. Additionally, a 2005 report by the U.S. National Center for State Courts, which analyzed state courts abroad and sponsored an initial study of state courts in Mexico (Caballero Juarez and Concha Cantú 2001), identifies adequate judicial budgets as “essential to ensuring judicial

independence” (Gramckow 2005). Finally, in a region beset by inflation rates higher than the U.S., Domingo (2000, 715) notes that these historically higher inflation rates further erode the real value of judicial budgets and corresponding salaries that are technically protected from reduction.

In Brazil, court budgets have been relatively healthy in comparison to Mexico. Indeed, the Ministry of Justice’s *Diagnóstico do Poder Judiciário* (2004, 72-75) emphasizes the high level of judicial spending in Brazil, measured as a percentage of the total public sector budget, relative to other countries. Using country-level data from the World Bank (2000), the *Diagnóstico*’s comparison focuses only on the federal judiciary, and additional reports from the World Bank (2004, 8-15) note that federal judicial budgets are historically higher in Brazil than in other countries in the region, including Mexico. However, state budgets are generally overlooked in these comparisons.⁷⁵

Despite these historically larger federal budgets in Brazil, there is still wide variation in judicial spending at the *state* level. Twenty per cent of the dataset presented here is composed of states with judicial budgets that constituted less than one per cent (1%) of state GDP. Although these figures are not directly comparable with the World Bank data that compares court budgets to public sector budgets (systematic data over time on total public sector budgets at the state level is unavailable), these numbers reveal substantial variation in state-level spending. This variation is striking considering the often repeated “national character” of the Brazilian judiciary.⁷⁶ Most importantly, the

⁷⁵ In this context, it is not surprising that judicial spending was not part of the 2004 reform package in Brazil, and, unlike Mexico, spending was rarely highlighted in the reform debates over the preceding 12 years.

⁷⁶ This phrase was most recently expressed in a judgment of the Brazilian supreme court (*Supremo Tribunal Federal*, or STF) in which the court ruled that different salary “ceilings” for state and federal judges are unconstitutional due to the principles of “isonomy” and “symmetry”, and the “national and

fact that spending is identified as perhaps a met goal at the federal level in Brazil highlights the significance of any variation found at the subnational level. That is, if analysts applaud the “reasonable to generous” federal court budgets in Brazil (World Bank 2004, 8), then there should be cause for concern regarding large subnational variation, especially regarding the states at the low end of that variation. It is this variation that this research seeks to explain.

Turning to Mexico, Domingo’s (2000) analysis of the Mexican Supreme Court emphasizes the importance of court budgets. In general, “financial autonomy and decent salaries” reduce judicial dependence on the political branches. More specifically, Domingo finds that judicial spending enhances the prestige of the judicial career (Domingo, 715). Whereas historically a position on the court was not a worthwhile career aspiration, higher salaries and greater resources with which to operate draw more competent individuals to the career. Additionally, secure salaries serve to insulate judges from bribery and corruption. Perhaps more importantly in the Mexican context, healthy salaries also insulate judges from the temptations of future political aspirations in which they might receive higher salaries. Historically, Mexican judges treated the judicial career as a stepping stone to more lucrative positions in the political branches, so political loyalties were often more important than judicial standards, and career mobility served as a kind of euphemism for the instability of judicial positions. With higher budgets, and correspondingly higher salaries (salaries make up more than 80% of budgets across both Brazilian and Mexican states), career incentives shift away from political loyalty and towards institutional professionalism (Domingo, 723-25). Judges

unitary character of the judiciary” (ADI 3.854-1, Feb. 28, 2007, Rel. Min. Cesar Peluzo, paras. 9,10) (emphasis added).

become more concerned with developing their professional reputation and remain in their positions on the bench for longer periods of time. As an added benefit of career stability, the reservoir of experience and expertise of the judiciary also grows. In short, higher budgets enhance the ethics, stability, and competence of the judicial career.

The financial reality of judicial institutions at the subnational level in Mexico, however, is bleak. As in the U.S., federal court budgets are increasingly secure and federal judges are very well compensated, earning in 2006 between \$100,000 and \$160,000 in U.S. dollars per year in base salary, which does not include year-end bonuses or other benefits (*El Universal* 2007). Despite growing budgets at the federal level, however, state budgets remain weak, vulnerable, and volatile.⁷⁷

Responding to this resource vulnerability, a recent two-year study commissioned by the Mexican Supreme Court listed the security of judicial budgets as one of its top priorities for reform (Caballero Juárez 2005; Caballero Juárez, López Ayllón, Oñate Laborde 2006). Emphasizing this point, another 2006 report by the Supreme Court (SCJN 2006) identified court budgets as the “Achilles heel” of judicial independence.

Given the importance of judicial spending, it is not surprising that existing research also relies on judicial spending as a proxy for, or a component of, judicial performance, especially independence (e.g., Beer 2006; Ríos-Figueroa 2006).

⁷⁷ In the Mexican states, the financially strapped judicial branch is what one lawyer referred to as “Cinderella”, the poor relative of the other branches of government (Arroyo Moreno 2007, 17). Until very recently, state judicial positions were subject to the approval of the governor, so judicial terms overlapped with the six-year term of the state executive, leading to what some scholars have labeled the “sexenio judicial” (Caballero Juárez 2005, 87). This openly dependent relationship between the executive and the judiciary lead to a subservient judiciary that, among other things, did not challenge the budget assigned to it by the governor. Even if the legislature noticed a weak budget, party discipline, loyalty, and hierarchy within the dominant PRI prevented any changes to the budget. Additionally, where the judiciary has dared to make such challenges, state executives have historically reduced budgets and starved the judicial branch in order to maintain its subservience and dependence. In a recent and extreme example of budgetary conflict, the judiciary of the State of Jalisco sued the other state branches of government in 2001 over the size of the judicial budget (Caballero Juárez, 89).

Furthermore, my own interviews in Brazil and Mexico reveal that judges consider the budget an important annual responsibility, determining the planning, prestige, and performance of the courts.⁷⁸

The regional emphasis on strengthening judicial institutions and the already substantial literature on judicial reform support the expectation for either uniformity or convergence in comparable measures of judicial spending in the region, e.g., spending per capita. This expectation is strongest within individual countries, like Brazil and Mexico, that have pursued ambitious judicial reform projects at the national level,⁷⁹ and where institutional similarities and policy diffusion put additional harmonizing pressures on court budgets.

Despite these expectations, state-level judicial spending varies widely within Brazil, and also varies substantially between the two countries. Illustrating this variation, Figure 1 plots subnational judicial spending in Brazil and Mexico for 2003, including Brazil's 26 states and Mexico's 31 states (excluding the federal districts).⁸⁰ For ease of

⁷⁸ Interviewees cited numerous examples of annual budgets being exhausted before the end of the fiscal year, the inability to acquire needed equipment or have surplus equipment to replace the inevitable failure of existing equipment, the inability to carry out improvements in both infrastructure and services, as well as the pressure placed on the political independence of the court due to insufficient budgets.

⁷⁹ Mexico passed extensive reforms beginning in 1994. Brazil did not pass a judicial reform until 2004. However, the Brazilian reform project began in 1992 and received widespread coverage and attention during the following 12 years. For discussions of the Brazilian reform process, see Sadek (2001) and Gross Cunha (2007); for discussions of the Mexican reform process, see Domingo (2000), Inclán (2004), and Finkel (2005).

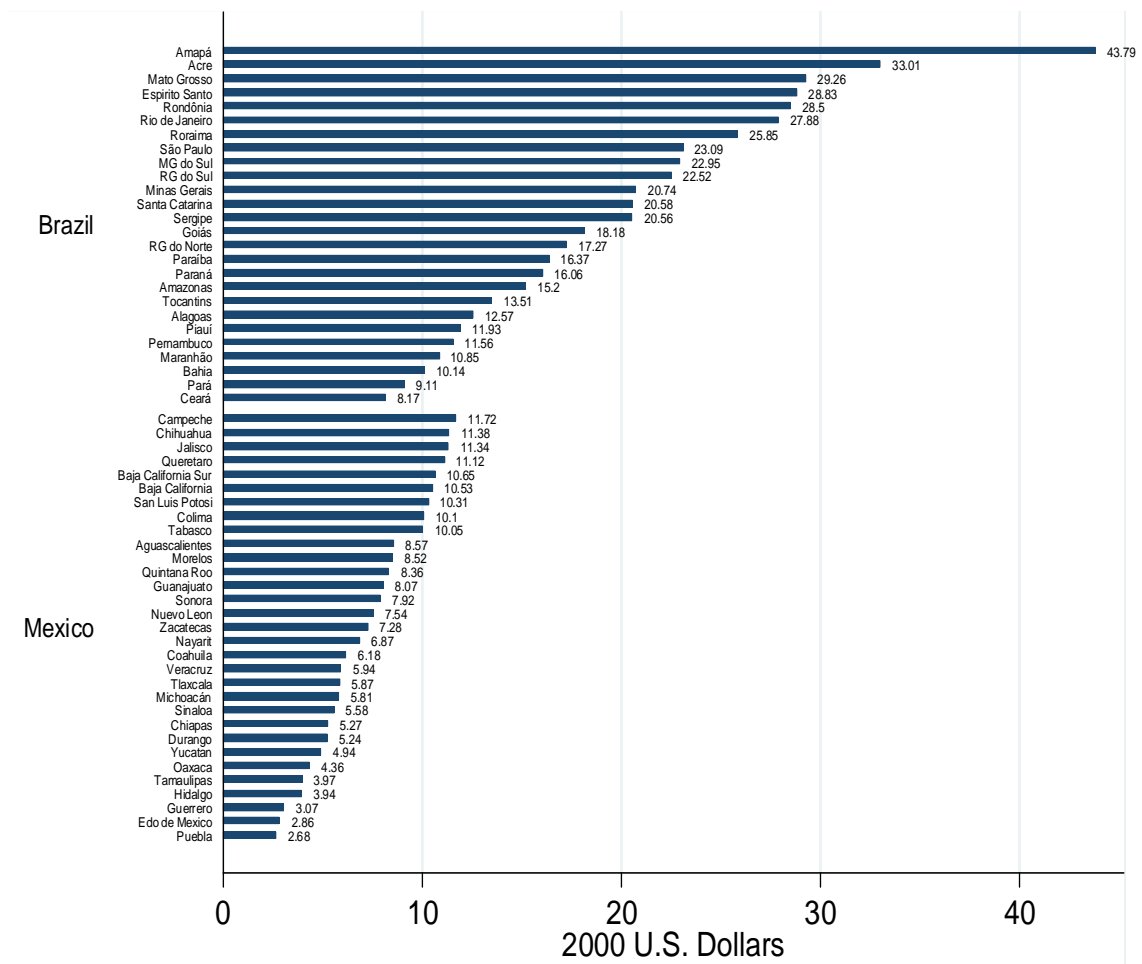
⁸⁰ These amounts reflect the amounts budgeted by the state for the operation of state courts at the first and second instance. In Brazil, first-instance courts are referred to as *foros* (*fórum* or *foro*, in the singular), and the second instance courts are the *Tribunais da Justiça*, or TJs. In Mexico, first instance courts are *tribunales de primera instancia* and there are state supreme courts, *Tribunales Superiores de Justicia*, or TSJs. Spending allocated for federal courts and other special courts, e.g., labor or military courts, is not included. Unlike other areas of public spending (e.g., education or health), federal transfers do not cover judicial expenses at the state level. There are, however, occasional special transfers from the executive branch, but these special projects occur randomly throughout the country and over time. All figures are converted into U.S. dollars using the exchange rate in the second quarter of the year, adjusted for inflation, and per capitized. Exchange rates and deflators are from the International Financial Statistics Database of

comparison across the two countries, the budgets were transformed to per capita U.S. dollars for 2000. Dependent variables in the statistical analysis are in local currencies.

the International Monetary Fund (IMF 2007), and population figures are from the IBGE and INEGI in Brazil and Mexico, respectively. It should be noted that scholars disagree regarding the quality of the Brazilian data, citing both the lack of common measurement standards across states and political factors that influence court statistics. However, existing data from the Ministério da Justiça, the Conselho Nacional da Justiça, IBGE, and IPEA, is the best available data. See Gross Cunha (2007) for an extended discussion of court statistics in Brazil.

All 26 Brazilian states and 31 Mexican states appear along the Y-axis, and judicial spending per capita appears along the X-axis. The amount for each state represents the deflated and per capitized spending for 2003, in constant 2000 dollars, and the states are listed in descending order according to judicial budget per capita. It should be noted that throughout the last few decades, judicial spending has, on average, always been higher in Brazil than in Mexico. This complements a central finding reported elsewhere regarding Brazilian court budgets, namely, that they are higher than the budgets of regional neighbors (World Bank 2000; 2004). Importantly, at least with regards to Mexico, the graph shows this difference exists *even at the state level*. That is not to say, however, that all states in Brazil spend more than every state in Mexico all of the time. Figure 1 graphs spending figures by state in both countries for 2003. In that year, almost every Brazilian state spent more than any one of the Mexican states. However, there are a few Mexican states – Campeche, Chihuahua, Jalisco, and Querétaro – that spend more than the bottom three or four Brazilian states. Also, 2003 is one of the years in which spending is closest between the two countries. Thus, the variation reported in Figure 1 shows less difference in spending levels between Brazilian and Mexican states than if the graph were of an earlier year, e.g., 1997.

Figure II.1. Variation in judicial spending per capita across Brazilian and Mexican states in the year 2003 (in constant 2000 U.S. Dollars).



At least two puzzles arise from Figure 1. First, the cross-state variation is stark. This variation underscores the fact that Brazil is actually “many Brazils” (and Mexico “many Mexicos”), and that court resources vary greatly from one part of the country to another. Also, Brazil’s supposedly national judiciary exhibits far more variation.⁸¹ Second, many of the states that spend the most on their courts are among the poorest and more rural states in Brazil (e.g., Amapá, Acre, and Rondônia). One possible explanation for this anomaly is that these states incurred start-up costs for new courts, new hires, or other new or singular events in 2003. However, data even from previous years show

⁸¹ Thanks to Bill Stanley for drawing my attention to this.

these states among the spending leaders. In per capita terms, these states have been outspending many of their richer counterparts since at least the early 1990s. A more likely explanation is that there is a minimum “floor” of judicial spending that every state must meet in order to have a minimally functioning court system, and judicial spending per capita is magnified in states where this floor is met but is divided by a low number of inhabitants. That is, analyses of judicial strength involve economy of scale problems. Growth rates show a different ordering of states, so per capita spending may be higher in small, rural states, but courts may be stronger overall in large, densely-populated states. Thus, it appears that any analysis of spending in Brazil needs to control for the influence of population size on spending in order to control for the fact that even small states incur this minimum “floor” of spending.

Why do some state courts have more resources than others? Why is judicial spending higher in some states than in others? In short, what accounts for the variation in Figure 1? Chapters 4 and 5 seek to answer these questions in the large-N analyses. Chapters 6 and 7 offer the small-N analyses, examining judicial spending as well as other dimensions of the administrative strength of state courts. Judicial spending per capita is the dependent variable in the large-N analysis and is also the first dependent variable analyzed in the small-N chapters. Thus, judicial budgets form a bridge between the types of empirical examinations.

4. Large-N Analysis: Mexico

4.1. Introduction

Complementing existing scholarship on judicial behavior, as well as broader scholarship on institutional change and performance, this chapter offers the first time-series cross-section analysis of state courts in Mexico. The analysis examines judicial spending – as a proxy for court strength – across the 31 Mexican states from 1993 to 2007, excluding the Federal District (Mexico City). The results reveal three principal findings. First, competition – measured four different ways – has a positive and statistically significant relationship with spending in both countries. Second, when controlling for ideology, divided government has a negative relationship with spending, cutting against the opportunity logic and supporting veto player theory. Third, ideology has a statistically significant and curvilinear, “U-shaped” relationship with spending, with the left prong of the “U” higher than the right. That is, leftist and rightist administrations spend more on courts than their centrist counterparts, but the left spends more than the right. Overall, leftist governors in competitive electoral environments appear to be the best combination for courts. The findings extend existing theories to new empirical areas and offer insights into the political logic of judicial change in new democracies.

4.2 Judicial Spending in the Mexican States

The regional emphasis on strengthening judicial institutions and the already substantial literature on judicial reform support the expectation for either uniformity or convergence in comparable measures of judicial spending in the region, e.g., spending

per capita. This expectation is strongest within individual countries, like Mexico, that have pursued ambitious judicial reform projects at the national level,⁸² and where institutional similarities and policy diffusion put additional harmonizing pressures on court budgets.

Despite these expectations, state-level judicial spending varies widely within Mexico. Illustrating this variation, Figure 4.1 plots subnational judicial spending across Mexico's 31 states for 2003 (excluding the Federal District; the vertical line identifies the overall mean at 50.09).⁸³ The cross-state variation in Figure 4.1 is stark. This variation underscores the fact that Mexico is “many Mexicos” and that court resources vary greatly from one part of the country to another. Second, at first glance, the general wealth of the state does not appear to determine court budgets. For instance, Oaxaca and Guerrero are states in the poor southern belt of the country, and it may therefore be less surprising that they are at the bottom of the figure. However, Hidalgo, the State of Mexico (listed as “Estado de México”), and Puebla are large, prominent states that border Mexico City in one of the country's industrial corridors.⁸⁴

⁸² Mexico passed extensive reforms beginning in 1994. For discussions of the Mexican reform process, see Domingo (2000), Fix-Fierro (2003), Inclán (2004), Finkel (2005), Ríos-Figueroa (2006), and Magaloni (2008).

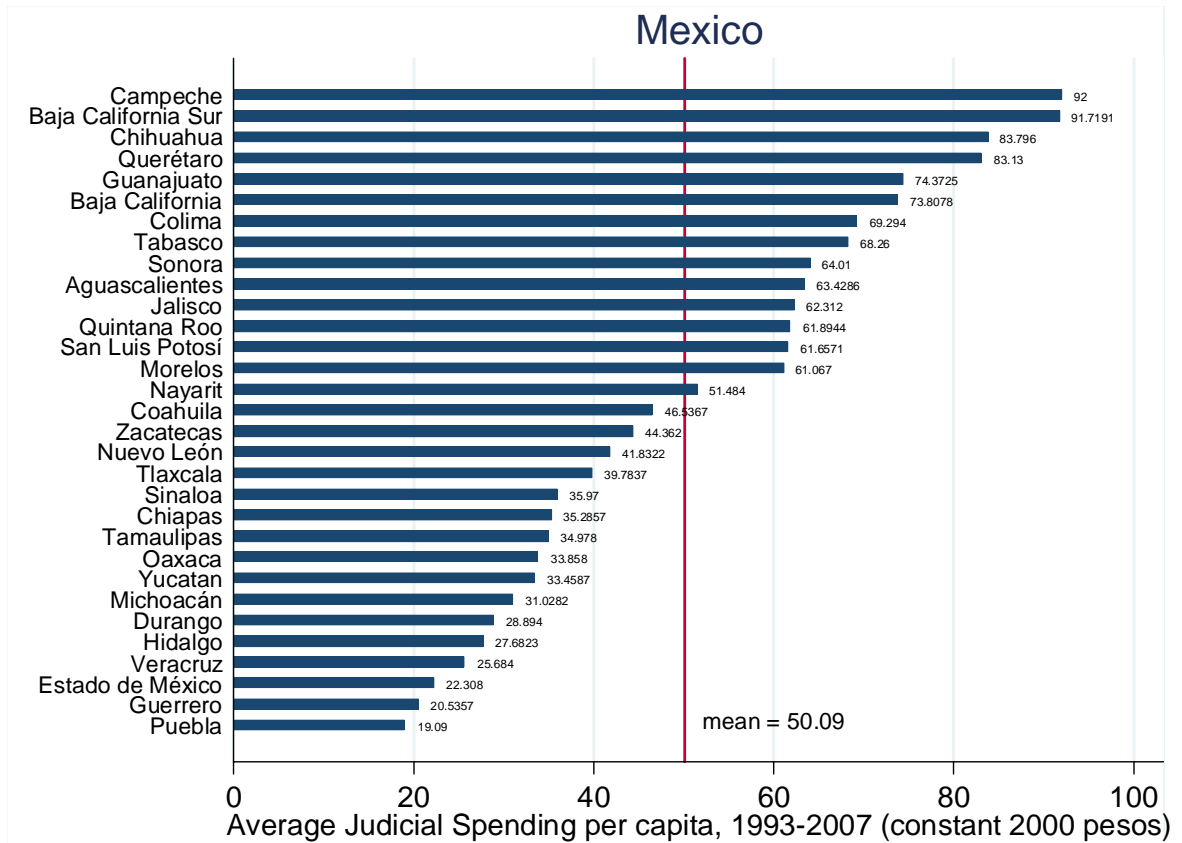
⁸³ These amounts reflect the amounts budgeted by the state for the operation of state courts at the first and second instance. In Mexico, first instance courts are *tribunales de primera instancia* and state supreme courts are *Tribunales Superiores de Justicia*, or TSJs. Spending allocated for federal courts and other special courts, e.g., labor or military courts, is not included. Unlike other areas of public spending (e.g., education or health), federal transfers do not cover judicial expenses at the state level. There are, however, occasional special transfers from the executive branch, but these special projects occur randomly throughout the country and over time. Exchange rates and deflators are from the International Financial Statistics Database of the International Monetary Fund (IMF 2007), and population figures are from INEGI. All 31 Mexican states appear along the Y-axis, and judicial spending per capita appears along the X-axis. The amount for each state represents the deflated and per capitized spending for 2003, in constant 2000 dollars, and the states are listed in descending order according to judicial budget per capita.

⁸⁴ The multiple entities named “Mexico” may be confusing to those unfamiliar with Mexico. The country is named “Mexico” and the national capital is “Mexico City”, but there is also a large state, which partly surrounds Mexico City, which is also named “Mexico”. Thus, the national unit and prominent subnational units carry the same name.

Why do some state courts have more resources than others? Why is judicial spending higher in some states than in others? In short, what accounts for the variation in

Figure 4.1?

Figure 4.1. Average judicial spending per capita across the 31 Mexican states.



4.3. Measuring Competition and Ideology in Mexico

In both the political-institutional and the judicial politics literatures, electoral competitiveness is most often measured as either margin of victory (Beer 2006), majority distance (Schedler 2005), divided government (Chavez 2004; Staton 2006) or, following Laakso and Taagepera (1979), as the effective number of candidates or parties (ENC or

ENP).⁸⁵

There is broader variation in electoral competition across the Mexican states. Margin of victory ranges from 0.02 in Guerrero (2000-2002), Jalisco (2001-2002), and Tlaxcala (1999-2002) to 0.93 in Quintana Roo (1994-1999). In Quintana Roo, this means the ruling party, PRI, won the governor's race in 1992 by a margin of 93% of the votes. Majority distance ranges from -0.11 in Michoacán (1996-2001) to 0.45 in Quintana Roo (1994-1999) and San Luis Potosí (1995-1997). ENC ranges from 1.10 in Quintana Roo (1994-1999) and 1.11 in San Luis Potosí (1995-1997) to 3.29 in Durango (1999-2002) (see descriptive statistics in Table 4.1 for more information).⁸⁶ With regards to ENC, we are looking for any movement away from 1, especially above 2, since the PRI's regime was marked by single-party dominance. Thus, low ENC below 2, as in Quintana Roo and San Luis Potosí, signal decreased competitiveness and diversity of political actors, i.e.,

⁸⁵ Margins of victory are high in where a single party or coalition is dominant, and correspondingly low under conditions of competitive elections. Majority distance – margin of victory minus 50 (i.e., margin – 50) captures the distance between the victor's share of the vote and half the electorate. Again, this number will be high where elections are non-competitive and high where competition is also high, but the variable will be positive where the winning party dominates by more than 50 percentage points. ENC requires a clarification with regard to measuring the competitiveness of a political system. This formula is often used to measure party system fragmentation, but adequately captures competitiveness in new democracies like Mexico and Brazil. Interparty competition is present when there are at least two political parties of comparable strength competing effectively for governor or for legislative seats in the state, and is low when a single party has a stranglehold on electoral competition (see also Beer 2003; Chavez 2004). In Mexico and Brazil, where provincial party systems are often dominated by a single party or coalition, ENC captures movement away from this authoritarian baseline. Thus, measures below two indicate the continuity of or movement toward single-party dominance, and measures above two indicate movement towards multipartyism. Divided government identifies all those instances in which the party that occupies the executive branch does not have either an absolute majority or a plurality in the legislature (Beer 2003; Ríos-Figueroa 2006; Iaryczower, Spiller, and Tommasi 2002; 2007). Other measures of competitiveness include Molinar's (1992) adjusted measure of ENP, which weights the variable according to the dominance of a single party (see also Schedler 2005), party turnover (Spiller and Tommasi 2007). Studies that capture competitiveness as party turnover and then model judicial performance based on how actors anticipate that turnover rely on a very strong assumption about the "perfect foresight" that these actors have regarding future party turnover, and how this foresight shapes strategic behavior (see Iaryczower, Spiller and Tommasi 2002, 705). The other measures of competitiveness capture the political insecurity generate by electoral competition without making this kind of assumption.

⁸⁶ $N = 1/\sum s_i^2$, where s_i equals the proportion of either votes or seats of the i -th party (Laakso and Taagepera 1979). For example, $N = 2.00$ where two parties each hold half of the seats in the legislature ($1/((.50)^2 + (.50)^2)$). $N = 1.00$ if one party were to completely dominate the legislature. Electoral data in Mexico is from the CIDAC database, the national electoral institute (IFE), and local, state electoral institutes.

the continuity of single-party dominance. Upward movement away from 2 signals increased competitiveness and diversity, i.e., a shift towards multipartyism.

Following the party classification outlined in Chapter 2, ideology is coded four different ways. First, a simple dummy variable captures the presence of ideology, coding observations as “0” if the governor is from the PRI and “1” if the governor is from either the PRD or PAN. Second, dummy variables identify each of the three main parties – PRD, PRI, and PAN – distinguishing the effect of each party without forcing each onto a left-to-right continuum. The third measure forces the three parties into an evenly spaced ordinal variable (-1 to 1). Thus, the three main parties – PRD, PRI, and PAN – are coded left (-1), center (0), and right (1), respectively. Finally, drawing on survey data from the University of Salamanca (Alcántara 2008), the fourth measure locates the three parties along a 10-point scale (1 equals “far left” and 10 equals “far right”), where the location of each party changes every three years depending on the survey data. The PRD varies from 2.56 to 2.78; the PRI varies from 6.09 to 6.94; and the PAN varies from 8.94 to 9.27.⁸⁷

While the first measure (presence of ideology) captures only whether movement away from the PRI influences judicial spending, the remaining measures are able to identify directional effects along a left-to-right ideological space, distinguishing between left and right. The left-right ideological continuum is able to capture a linear relationship between ideology and spending, i.e., whether leftist politicians increase judicial spending more than rightist ones, or vice-versa. However, the empirical implication from the theory outlined above is that the *presence* of ideological commitments – both left and right – matters more than their direction. That is, ideology should have a curvilinear, “U-shaped” relationship with spending, captured mathematically by including both the linear

⁸⁷ This measure is comparable to that of Power and Zucco (2009) used in the analysis in Brazil (Chapter 5).

and squared terms of the ordinal and interval ideology measures.

Recalling the theoretical arguments in Chapter 2 regarding the anticipated effects of competition and the positive effects of leftist and rightist parties, the expectations and measures above yield the following hypotheses.

- H1a:** *Judicial spending will vary negatively with margin of victory.*
- H1b:** *Judicial spending will vary negatively with majority distance.*
- H1c:** *Judicial spending will vary positively with ENC.*
- H1d:** *Judicial spending will vary positively with divided government and negatively with unified government IF re-election, signaling, insurance, or opportunity logics are stronger than the veto player logic.*
- H1e:** *Judicial spending will vary negatively with divided government and positively with unified government if the veto player logic is stronger than the re-election, signaling, insurance, or opportunity logics.*

- H2a:** *Judicial spending will vary positively with the presence of programmatic-ideological commitments.*
- H2b:** *Judicial spending will vary positively with both Left and Right governors.*
- H2c:** *Ideology has a curvilinear relationship with spending.*

4.4. Data and Methods

Data

Previous sections explain the data for judicial spending and the principal explanatory variables of competition and ideology. The dependent variable is annual state-level judicial spending per capita. Mexican budget data, which is from state official reporters (*Diario Oficial*, *Periódico Oficial*, or *Gazeta Oficial*)⁸⁸ captures the annual

⁸⁸ The court budget develops in the contested process of executive proposals and legislative negotiations in the fall of each year, and the final amount allocated to the judiciary is then published in the official state reporter, usually in the final week of December, as the “Presupuesto de Egresos”. Gaps in the data were supplemented with data from the national statistics office (*Instituto Nacional de Estadística, Geografía, e Información*, or INEGI), the Financial Coordinating Council (*Consejo Coordinador Financiero*, or CCF 2004), Bello Paredes (2006, 101 n.12), and individual state websites, e.g., Poder Judicial del Estado de Baja California, Informe relativo a la administración de justicia (2005), available at <http://www.poder-judicial-bc.gob.mx/transparencia/documentos/pdfs/infadmin/5.pdf> (last accessed Nov. 1, 2006). The CCF report

judicial budget per capita in real terms, adjusting for inflation and using 2000 as the base year in Mexico (2000 = 100).⁸⁹ The 14-year time span (1993-2007) includes years before and after the historic national transition in 2000 that marked the end of the PRI's 71-year reign. Thus, the sample captures wide variation in key independent variables of competition and ideology.

Three control variables are included: gross domestic product (GDP) per capita, population density, and election year. GDP figures control for broad differences in the level of development across states and are from INEGI. Population density controls for the concentration of people and the general degree of urbanization. All states are expected to incur a minimum "floor" of court maintenance costs as part of economy of scale problems associated with state judiciaries. Similarly, small changes in already small budgets might appear large due to the per capita transformation. Population density controls for these factors. Population and territory figures for this variable and the per capita transformation are also from INEGI in Mexico. Election year is a dummy variable (0, 1), where 1 identifies a year in which governor elections were held. This variable captures any budgetary increases associated with the electoral calendar. Table 1 reports descriptive statistics for all data.

contains budget data for all states from 1998 to 2003. Preliminary comparisons between data collected from primary sources during field research and CCF data revealed some inconsistencies. These inconsistencies were corrected where they were identified. For instance, budget data for the state of Hidalgo were corrected by consulting the official state reporter in Hidalgo's Congressional Archive.

⁸⁹ Deflation indices are drawn from the International Financial Statistics Database of the International Monetary Fund (IMF 2006). Transformations are the author's own using second quarter data from IMF. The second quarter is utilized because this likely corresponds with the information legislators and other politicians would have had available to them prior to preparing and negotiating the annual budget in the fall months of each year.

Table 4.1. Descriptive Statistics for Large-N Analysis in Mexico.

MEXICO					
Time span: 1993-2007					
Variable	N	Mean	Std. Dev.	Min.	Max.
Spending (<i>Pesos</i>)	271	52.01	25.69	11.18	109
Margin of victory	271	0.27	0.25	0.02	0.93
Majority distance	271	0.08	0.14	-0.11	0.45
Competition (ENC)	271	2.24	0.47	1.10	3.29
Unified-super	259	0.17	0.37	0	1
Unified-simple	259	0.75	0.43	0	1
Unified-plurality	259	0.89	0.32	0	1
Divided government	259	0.08	0.28	0	1
Ideology-presence	271	0.27	0.44	0	1
Left (PRD)	271	0.09	0.29	0	1
Center (PRI)	271	0.73	0.44	0	1
Right (PAN)	271	0.17	0.38	0	1
Ideology-ordinal	271	0.08	0.51	-1	1
Ideology-ordinal (squared)	271	0.27	0.44	0	1
Ideology-Salamanca	271	6.70	1.63	2.56	9.27
Ideology-Salamanca (squared)	271	47.61	20.08	6.55	85.93
GDP per cap (log)	271	3.74	0.42	2.97	4.53
Population density	271	93.87	123.45	4.71	620.73
Election year	271	0.15	0.36	0	1

* Denotes mode rather than mean.

Note: Overall standard deviation and minimum/maximum values. Stata also returns between and within values with *xtsum* command, but these are omitted for economy of presentation.

Methods

The unit of analysis is the “state-year”. The panel dataset has 271 observations ($N = 271$). These observations come from all 31 Mexican states, excluding the Federal District. The time span ranges from 1993 to 2007, but data are available for varying numbers of years in each state, making the panels unbalanced. A minimum of five and a maximum of 14 time points are available per state. There were some missing data points due to incomplete reports from individual states, but this small number of gaps (five) occurred in single time points within longer series of data, so the gaps were filled with interpolated values. Thus, there are no remaining gaps in the dataset. The unbalanced panel structure of the data generates several methodological challenges, as outlined in Chapter 3 (Section 3.3.1). Following the conclusions from that chapter, the large- N analysis applies a population-averaged panel-data model, or generalized estimating equation (GEE), with a forward-lagged dependent variable to capture temporal dynamics.⁹⁰

4.5. Results

Tables 4.2 and 4.3 and Figures 4.2 and 4.3 report all findings. Table 4.2 highlights different measures of competition (models 1-6); Table 4.3 highlights different measures of ideology (models 7-11). Figure 4.2 graphs predicted spending values according to

⁹⁰ Independent variables are measured at time t and the dependent variable at time $t+1$. See Chapter 3 for full discussion of methodological challenges with TSCS data and the tradeoffs involved in selecting the GEE model from among other options, e.g., OLS with panel-corrected standard errors (PCSEs), AR1 models, panel-specific AR1 models, lagged dependent variables, time dummies, and fixed effects models. Checks for robustness using these alternative models generate results that are substantially similar. Indeed, most of the additional models showed stronger effects of competition and ideology, suggesting the results reported here are among the most conservative. All models estimated with Stata v9.0 using *xtgee*. Data and do-file available from the author.

three different measures of ideology; and Figure 4.3 graphs marginal effects and conditional standard errors for ideology in the final, full model (Model 11 in Table 4.3).

Models 1-4 in Table 4.2 offer strong support for the general proposition that electoral competition exerts an upward pressure on judicial spending. Margin of victory and majority distance both have the anticipated negative relationship with spending, i.e., spending increases as the margin of victory narrows. Effective number of candidates (ENC) and divided government have the anticipated positive relationship.

Table 4.2. GEE analysis of effects of competition on judicial spending in Mexico.

	1	2	3	4	5	6
margin of victory	-26.21** (3.56)				-25.50** (4.38)	-24.93** (4.31)
majority distance (margin – 50)		-48.02** (6.67)				
ENC			13.54 ** (2.05)			
divided government				7.27 * (3.06)	-5.57 (3.65)	
unified gov (plurality)						4.79 (3.48)
unified gov (super)					-2.89 (2.48)	-2.29 (2.51)
unified gov (simple)					-7.48** (2.35)	-7.82** (2.58)
GDP per capita (logged)	53.83** (6.65)	54.23** (6.72)	57.01** (6.92)	82.58** (7.99)	52.06** (6.66)	51.78** (6.64)
population density	0.00 (0.03)	0.00 (0.03)	0.00 (0.03)	0.03 (0.04)	0.00 (0.03)	0.00 (0.03)
election year	2.29 (1.96)	2.37 (2.00)	2.06 (2.05)	-2.01 (2.06)	1.50 (2.03)	1.42 (2.03)
constant	-141.76** (25.62)	-146.39** (25.73)	-190.73** (25.27)	-257.95** (30.35)	-128.20** (25.96)	-131.80** (25.62)
N	271	271	271	259	259	259
States	31	31	31	31	31	31
Wald χ^2	181.53	175.47	161.61	120.63	194.05	192.95
Prob > χ^2	0.00	0.00	0.00	0.00	0.00	0.00

Coefficients with standard errors in parentheses. ** p < .01 * p < .05

Each of these relationships is also statistically and substantively significant. For instance, for each percentage point decrease in the margin of victory, spending rises by 0.26 pesos per capita. That is, for every four-point drop in the margin of victory, spending increases approximately one peso per capita. This may not appear to be much, but if a state has one million people, then the judicial budget expands by one million pesos. Similarly, a one unit increase in ENC translates to an increase in judicial spending of 13.54 pesos per capita. If a state was dominated by the PRI and had an ENC of 1.10 and a population of more than two million (e.g., San Luis Potosí in the mid-1990s), a change to competitive politics and an ENC of 2.10 would translate into an increase in the budget for state courts of approximately 27 million pesos, or almost three million U.S. dollars.⁹¹

Models 5 and 6 in Table 4.2, however, show that divided government loses its statistical significance if margin of victory is included in the same model.⁹² Conversely, margin of victory maintains its statistical and substantive significance.⁹³ Models 5 and 6 also add different measures of unified government (super majority, simple majority, and plurality). Of all measures, only unified-simple is statistically significant, and has a negative relationship with spending, suggesting that non-competitive contexts reduce spending, which is the corollary expectation of competitive contexts and increased spending.

⁹¹ Mexican pesos have been trading at approximately 10 to the dollar (10:1) for years as of early 2009. This is changing rapidly with the global economic crisis, and the peso had lost nearly half of its value against the dollar as of March 1, 2009, trading at approximately 15:1.

⁹² Divided government and unified-plurality are correlated, so they are not included simultaneously.

⁹³ Auxiliary models with ENC instead of margin of victory show that ENC also maintains its significance when included with measures of unified and divided government.

Table 4.3 builds on the last model in Table 4.2 by adding four measures of ideology to the analysis: (i) presence of ideology, (ii) ideology dummies (left and right; center is modal category and therefore omitted), (iii) an ordinal variable (-1 to 1), and (iv) a 10-point scale using the Salamanca data (Alcántara 2008).

Table 4.3. GEE analysis of effects of ideology on judicial spending in Mexico.

	7	8	9	10	11
margin of victory	-22.64** (4.24)	-23.57** (4.26)	-23.83** (4.27)	-23.83** (4.27)	-23.14** (4.21)
Divided government		-9.84* (3.73)	-11.34** (3.80)	-11.34** (3.80)	-12.51** (3.77)
Unified gov (plurality)	7.77* (3.49)				
Unified gov (simple)	-5.65* (2.59)	-5.09* (2.37)	-3.67 (2.46)	-3.67 (2.46)	-2.80 (2.44)
Unified gov (super)	-1.63 (2.44)	-2.59 (2.40)	-1.97 (2.43)	-1.97 (2.43)	-1.67 (2.40)
Ideology (presence) (non-PRI governor)	9.25** (2.78)	10.04** (2.83)			
Left (dummy)			16.17** (3.99)		
Right (dummy)			6.13 (3.37)		
Ideology-ordinal (-1 to 1)				-5.02* (2.32)	
Ideology-ordinal (squared term)				11.15** (2.88)	
Ideology-Salamanca (1-10)					-15.77** (3.37)
Ideology-Salamanca (squared term)					1.17** (0.28)
GDP per capita (logged)	45.91** (6.52)	45.67** (6.55)	47.00** (6.51)	47.00** (6.51)	46.06** (6.34)
population density	-0.00 (0.02)	0.00 (0.02)	0.00 (0.02)	0.01 (0.02)	0.00 (0.02)
election year	2.01 (1.98)	2.20 (1.97)	2.44 (1.98)	2.44 (1.98)	2.64 (1.96)
constant	-117.26** (24.70)	-108.97** (25.17)	-115.28** (25.11)	-115.28** (25.11)	-59.97* (27.67)
N	259	259	259	259	259
States	31	31	31	31	31
Wald χ^2	216.64	220.64	224.73	224.73	237.81
Prob > χ^2	0.00	0.00	0.00	0.00	0.00

Coefficients with standard errors in parentheses.

** p < .01 * p < .05

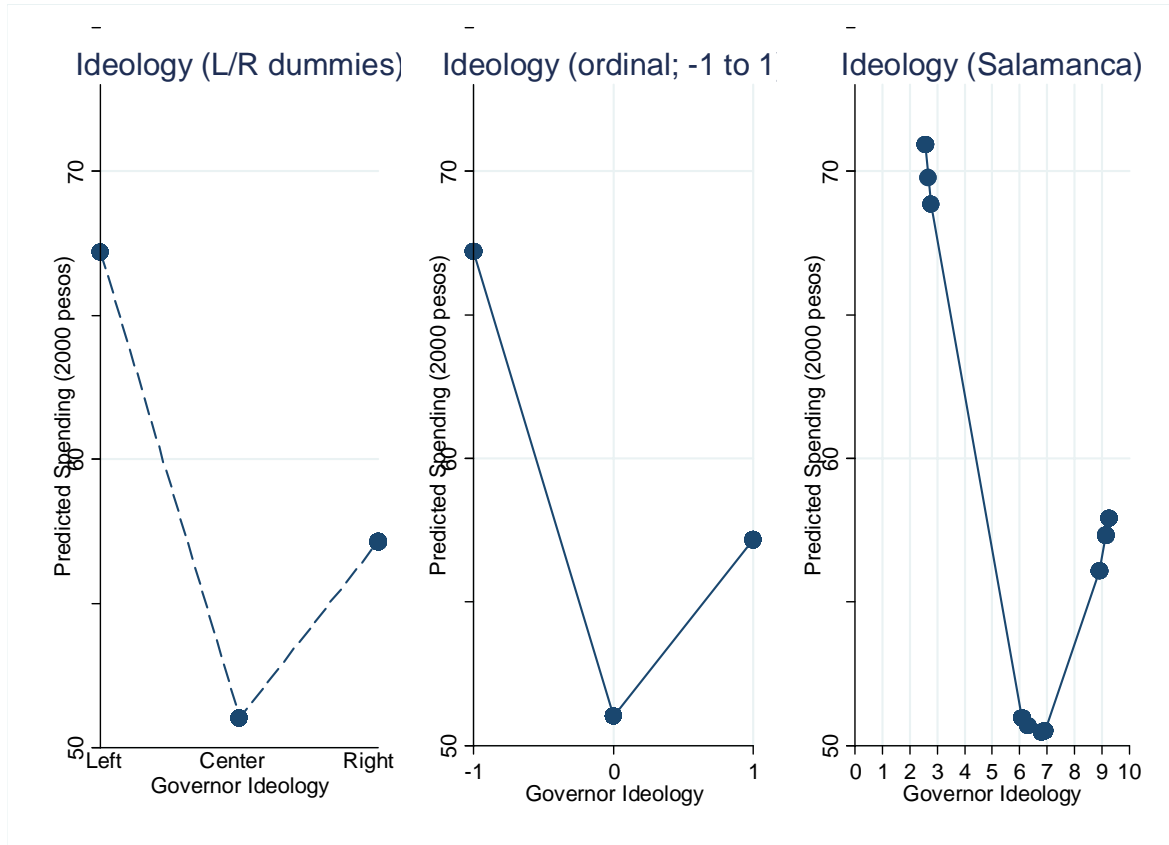
Notes: inclusion of PRI (center) instead of PAN or PRD in model 3 shows negative sign on PRI. If PRD is omitted, PAN and PRI are both negative and significant, with the PRI more statistically and substantively significant in negative direction than PAN. This is just a different way of saying that the left (PRD) exerts a strong positive pressure on judicial spending that is both statistically and substantively significant. Findings also show the effect of ideology is non-linear as we move from left to right.

The first two models differ only in that Model 7 includes unified-plurality while Model 8 includes divided government. In both of these models, margin of victory maintains its negative and significant effect. However, there is mixed evidence regarding veto player expectations: unified-plurality has the expected positive effect on spending, but an even more aligned government (unified-simple) has a negative effect, and the most aligned type of government (unified-super) is not statistically significant. In both models, the presence of ideology has a positive and significant relationship with spending. In substantive terms, having either a PAN or PRD governor instead of a PRI governor increases judicial spending by between nine and ten pesos per capita (9.25 and 10.04 in Models 7 and 8, respectively).

Models 9-11 offer a finer examination of ideology, unpacking “presence” into its directional components – left, center, and right. This measurement improvement for ideology also yields more stable results regarding divided government, as shown below. First, Model 9 shows that leftist governors exert a positive and significant effect on spending in comparison to the base category (PRI or “center”), and this effect is substantively very strong, translating into an increase of 16.17 pesos per capita for PRI-to-PRD transitions. Rightist governors also exert a positive effect, but this effect is not statistically significant (at the 0.50 level; however, the relationship is significant at the 0.10 level; $z = 1.82$). Moreover, the results from this model offer suggestive evidence regarding the non-linear relationship between ideology and spending. That is, both ends of the ideological spectrum – left and right – exert an upward pressure on spending while a “spending valley” appears in the center, reflecting a “U” or “V”-shaped relationship

between ideology and spending. The first graph in Figure 4.2 clarifies further by plotting predicted values for each ideology position.

Figure 4.2. Effect of three ideology measures on spending in Mexico.



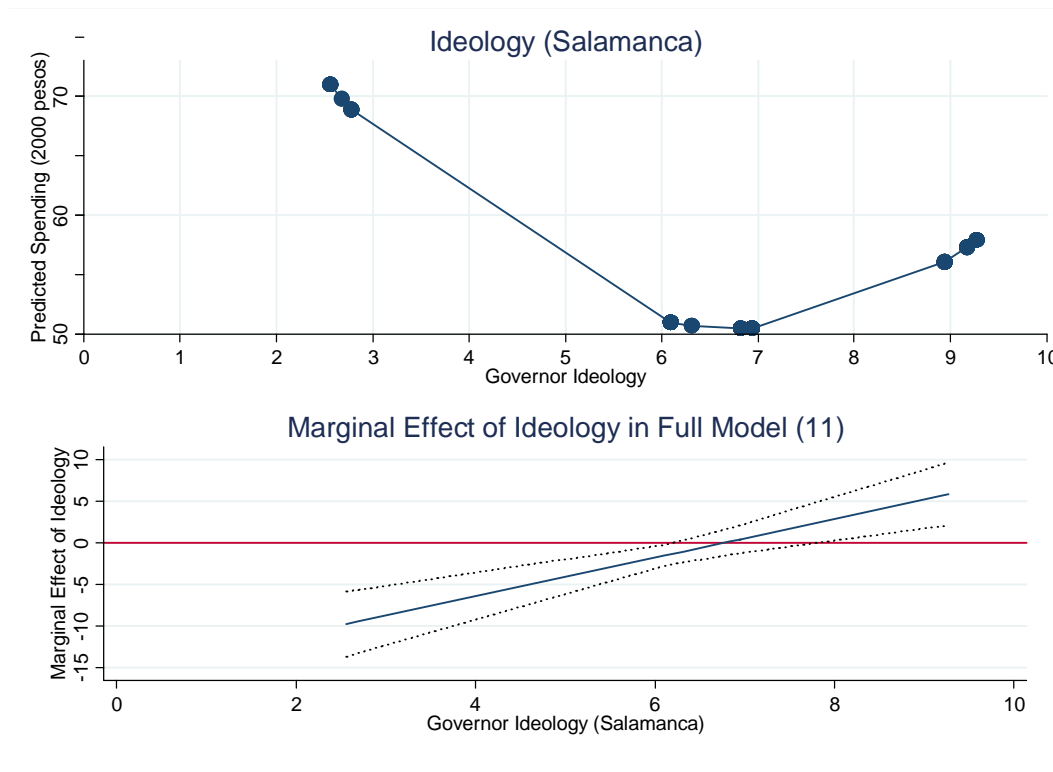
Continuing with Table 4.3, Model 10 unpacks ideology further into an ordinal variable and its squared term, capturing the non-linear relationship between ideology and spending. The negative sign on the linear term indicates the left spends more than the center or the right, and the positive sign on the squared term supports the conclusion that there is a non-linear, U-shaped relationship. The middle graph in Figure 4.2 below clarifies further by plotting predicted values against ideology. Note the similarity with the first graph despite the different operationalization of ideology.

Finally, Model 11 unpacks ideology into a 10-point scale. Again, the results support the conclusion of a curvilinear relationship between ideology and spending. As was the case in Model 10, there is a negative sign on the linear term and a positive sign on the square term, suggesting a U-shaped curve with the left side of the “U” extending higher than the right. The third graph in Figure 4.2 plots predicted values against this last measure of ideology, offering the clearest picture yet of the parabolic shape of the relationship between ideology and spending. To clarify, there are three parties, each with three time points, generating a total of nine points graphed in the figure. Again, note the similarity of the relationship’s shape across all three graphs despite different measures of ideology.

Following Brambor, Clark, and Golder (2006), the significance of interactions cannot be fully determined by simply inspecting the coefficients, standard errors, and z-values of constitutive terms. Rather, a meaningful interpretation requires the computation of marginal effects and conditional standard errors. To this end, Figure 3 plots predicted values (top graph, as in Figure 2), and marginal effects of ideology (bottom graph) for Model 11 in order to capture the substantive and statistical significance of the squared term. The relationship is significant where the upper and lower bounds of the 95% confidence interval are either *both above zero* or *both below zero* (Brambor et al., 73-76). Thus, ideology has a negative and statistically significant effect when the value of ideology is less than approximately six (6), the relationship is not statistically significant for ideology values between six (6) and eight (8), and the relationship reverses and is positive when ideology is greater than eight (8).

Finally, in all three models where ideology is unpacked into its left-to-right directional components, divided government is negative and statistically significant, showing an increase in veto players inhibits spending. This is the most stable finding regarding divided government.

Figure 4.3. Marginal Effect of Ideology in Full Model (Model 11)



Finally, the control variables offer some insights, as well. GDP per capita, operating as a control for the general level of development of the state, is statistically significant in all models. The positive relationship was anticipated and justifies the inclusion of the control for different levels of development across states. The controls for election years and population density are not significant. Thus, the timing of elections does not seem to influence state court budgets, and the degree of urbanization or concentration of population also does not shape spending.

4.6. Discussion

The findings regarding competition offer strong support for the expected positive relationship between electoral competition and spending. This result aligns with a growing literature on the positive effects of increasing electoral competition in new democracies (Rodriguez 1998; Beer 2001; 2003; Hecock 2006). Moreover, this result

resonates with findings regarding the positive effect of competition that are specific to the strength of the judiciary (Chavez 2004; Beer 2006; Ríos-Figueroa 2007). Thus, the rising level of interparty competition in Mexico bodes well for courts. This does not mean simply that “democracy is good for courts”. Rather, narrower margins of victory are good, and two parties are better than one, three are better than two, and four are better than three.

However, the findings go further by seeking to discriminate or adjudicate between causal logics underlying competition. The results provide support for both the positive influence of competitive elections (a “re-election” logic) and the negative influence of increased veto points (veto player logic). Initially, Table 4.2 provides support only for the positive relationship between competition and spending. Margin of victory exerts a downward pressure on spending, and ENC exerts an upwards pressure. Moreover, the negative and significant relationship between unified-simple and spending cuts against veto-player expectations. Once the models control for ideology in Table 4.3, however, there is support for both the positive expectations associated with electoral competitiveness and the negative expectations arising from veto player theory. The support for veto player theory is consistent beginning in Model 8 on Table 4.3, and becomes stronger starting with Model 9, where ideology is disaggregated into left and right components for the first time. In this and subsequent models, margin of victory is negative and significant and divided government is negative and significant. Although none of the measures of unified government are significant, the negative sign on divided government is stable in Models 9-11, supporting the logic that increasing veto points

inhibit spending. Notably, this results suggests political openings created by more veto players do not enhance court strength, cutting against the opportunity logic.

Between electoral pressures and veto points, which has greater substantive effect? And between competition and ideology, which exerts the strongest influence? Regarding the first question, the negative pressure of divided government may well overwhelm the positive effects of competitive elections. Considering that it would take a change in margin of victory of approximately 40 percentage points to match the magnitude of the effect of divided government, a reasonable conclusion is that a change of that kind is unlikely. Further, even if a margin of victory were to narrow by 40 points, a likely side effect would be divided government. Ultimately, these two dynamics are in tension with each other, as one result suggests narrow margins of victory push spending up, but states with low margins of victory are likely to generate divided governments, which press spending down.

Regarding the second question, the results suggest ideology can overcome the dampening effect of divided government. Specifically, the magnitude of the positive effect of a leftist governor is greater than the magnitude of the negative effect of divided government. In Model 9, both divided government and leftist governor are operationalized as dummy variables (0,1), and both exert a statistically significant effect on spending. However, the magnitude of the effect of a leftist governor (16.17) is greater than that of divided government (-11.34, or an absolute value of 11.34). That is, where a leftist governor combines with divided government, the leftist governor will overcome, on average, the negative effect of divided government.

The significance of the left in local government in these models emphasizes the overall findings regarding ideology. Key among these findings is the non-linear, U-shape of the relationship between ideology and spending. The predicted values in all three graphs of Figure 4.2 emphasize this shape, as well as the marginal effects graph in Figure 4.3. Importantly, the left point of this “U” is always higher than the right point, reinforcing the finding that – even though both the PRD and the PAN benefit spending more than the PRI – the PRD exerts a stronger upward pressure than the PAN. It should also be emphasized that the models exclude PRD-governed Mexico City precisely to avoid biasing results in favor of the left. Even without Mexico City, the PRD’s effect is positive and significant, supporting the conclusion that the left matters a great deal for the financial strength of Mexico’s local courts.

The results make sense in light of the fact that the PRI is the party that ruled Mexico for 71 years (1929-2000), characterizing the dominant-party style of authoritarianism in this country. In states where the PRI remains dominant, the party faces few incentives to share power or delegate power to another institution, much less build a relevant judiciary where it has historically been irrelevant. For example, the PRI remains dominant in the central state of Hidalgo, governing local politics virtually unchallenged for almost 80 years. In Hidalgo, the judicial budget is one of the lowest in the country, judicial selection is highly politicized, institutional design is weak, and political and judicial careers overlap in ways that blur the line between the political branches and the judiciary (see Chapter 6).⁹⁴

⁹⁴ A much-publicized judicial reform in Hidalgo in 2006 offered only shallow and superficial changes.

In contrast to PRI-dominated states like Hidalgo, historically recent electoral successes by the PRD and PAN at the state level offer signs of positive change. The PAN was the first opposition party to win a governorship, beginning with the state of Baja California in 1989. Since then, the PAN has generated success stories in the administration of justice, notably the shift to oral proceedings and other improvements in the northern state of Nuevo León. Meanwhile, the PRD won the executive office in the federal district of Mexico City in 1997, and has since gone on to win governorships in five states. One of the most dramatic effects of the PRD on court strength was in the western state of Michoacán, where the new PRD governor doubled the judicial budget in 2003, and also led a judicial reform project that created one of the strongest institutional designs in the country. Meanwhile, a PAN-aligned administration in Aguascalientes presided over inaction and even counter-reforms that weakened the judiciary, undermining arguments that the PAN strengthens courts (see Chapter 6). In short, these brief qualitative observations are consistent with the left-prominent, U-shaped relationship depicted in Figures 4.2-4.3 above.

4.7. Conclusion

Electoral competition exerts an upward pressure on spending, suggesting a re-election logic, but divided government exerts a downward pressure, suggesting a veto player logic. The finding regarding divided government also cuts against the opportunity logic. Ideology has a U-shaped relationship with spending, with the left exerting a stronger positive pressure than the right. That is, both the PRD and the PAN spend more on courts than the PRI, but the PRD spends more than the PAN.

The ideology results suggest that the ideological location of the base of authoritarianism is important. Stated otherwise, the ideological location of the main opposition parties may exert the strongest positive effect on court strength. The base of authoritarianism was in the center in Mexico, and the main opposition to the PRI came from both the PRD and PAN. This is not to say that opposition trumps ideology. Ideology matters beyond the oppositional dynamic.⁹⁵ Future research using the historical institutional approach to court building can help shed light on this phenomenon and perhaps identify path-dependent explanations of the ideological location of programmatic commitments to state building. For instance, if the base of authoritarianism were on the ideological right in another country, perhaps both the left and center would strengthen courts and other institutions.

⁹⁵ In related work, I analyze opposition and the interaction between competition and ideology in greater detail (Ingram 2009). In that paper, the results show the positive influence of the PRD and the PAN is not simply a historical artifact related to their roles as opposition parties. Indeed, the PRD and PAN continue to exert a positive pressure even as governing parties, and the PRI continues to have a drain on spending even when it takes on the role of opposition party. Thus, the ideological base of authoritarianism and opposition movements may have lasting legacies that shape the trajectory of legal institutions in emerging democracies. In short, beyond electoral incentives, there is something about being PRI, PAN, or PRD that influences reform in different ways.

5. Large-N Analysis in Brazil

5.1. Introduction

Complementing the analysis of Mexican states in Chapter 4, this chapter offers the first time-series cross-section analysis of court strength in the Brazilian states. Indeed, while there is a previous econometric analysis of the variation across state courts in Mexico for a single year (Beer 2006), this is the first econometric study of Brazilian state courts. Examining judicial spending per capita – as a proxy for court strength – across the 26 Brazilian states from 1985 to 2006, excluding the Federal District (Brasilia), reveals three principal findings. First, competition has a positive and statistically significant relationship with spending, though the robustness of this relationship is weaker than in Mexico since two of the four measures for competition (margin of victory and ENC) offer inconsistent results. Second, when controlling for ideology, divided government maintains a positive, statistically significant relationship with spending, unlike Mexico, cutting against veto player theory and in favor of the positive effects of competition. The precise causal logic undergirding this result is unclear and is addressed further in the small-N, process-based analysis in Chapter 7. Third, ideology has an inconsistent relationship with spending until the models control for two factors: (i) the institutionalization of provincial party systems, measured as electoral volatility, and (ii) time periods before and after 1994, a division that captures both the stabilizing effect of the *Real Plan*⁹⁶ and the ideological shift of one of Brazil's major parties – the PSDB – from center-left to center-right (Power and Zucco 2009). Once these two factors are considered, models that split the sample accordingly find the

⁹⁶ Real Plan (*Plano Real*) established a new currency in 1994 in order to break inflationary cycles in Brazil. This was the fifth such effort since the mid-1980s, but was successful (unlike previous attempts).

same “U-shaped” relationship with spending as was found in Mexico, including the higher left prong of the “U”. However, this results appears only in more institutionalized, low volatility party systems prior to 1995, i.e., in the earlier time period of 1985-1994. After this point, a slightly left-skewed, bell-shaped relationship appears, suggesting both the far left and the far right push spending down, while centrist and center-left parties exert an upward pressure on spending. Models that examine the effects of party dummies support these findings, in which the center-left PDT appears consistently as the party that spends the most on courts. The findings extend existing theories to new empirical areas and offer insights into the political logic of judicial change in new democracies.

5.2. Judicial Spending in the Brazilian States

As was the case in Mexico, the regional emphasis on strengthening judicial institutions and the already substantial literature on judicial reform support the expectation for either uniformity or convergence in comparable measures of judicial spending in the region, e.g., spending per capita. This expectation is strongest within individual countries, like Brazil, that have pursued ambitious judicial reform projects at the national level,⁹⁷ and where institutional similarities and policy diffusion put additional harmonizing pressures on court budgets.

Despite these expectations, state-level judicial spending varies widely within Brazil. Illustrating this variation, Figure 5.1 plots average judicial spending per capita across Brazil’s 26 states for the 22 years between 1985 and 2006 (excluding the Federal

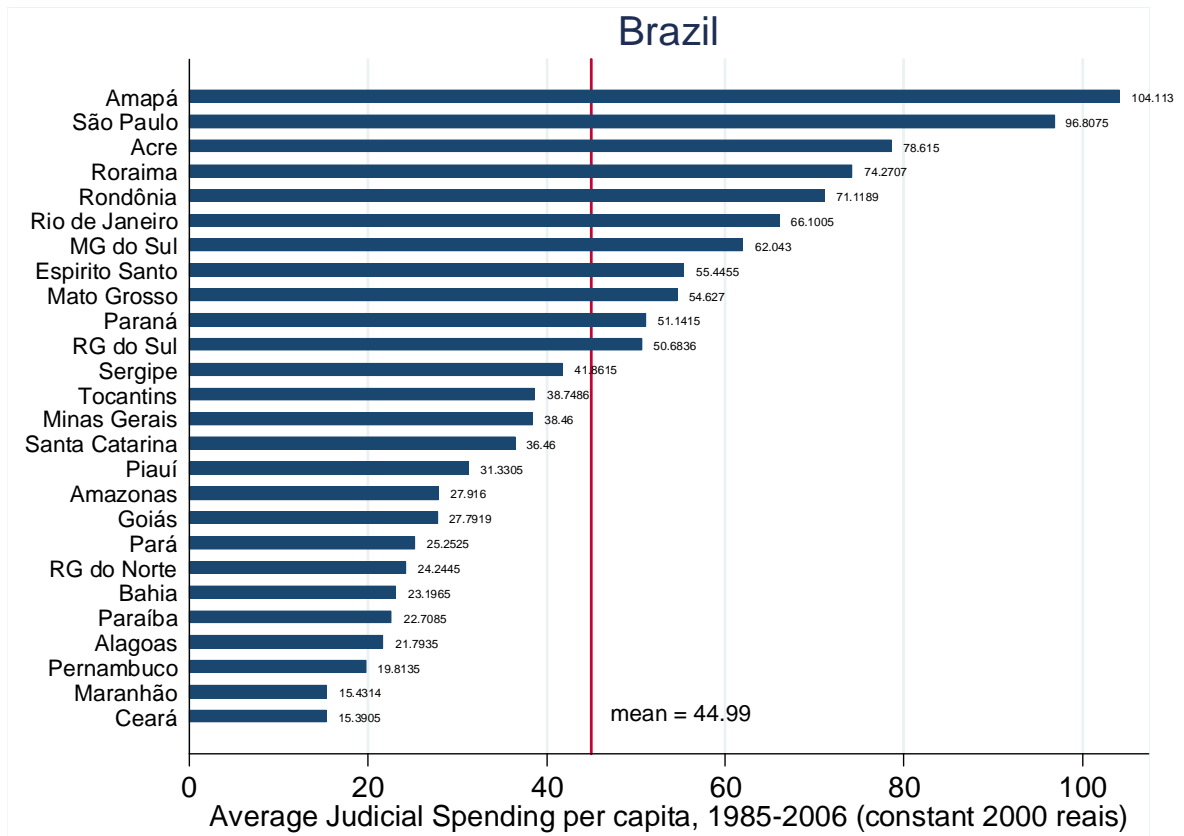
⁹⁷ Brazil initiated a national judicial reform project in 1992. This project was not initially successful, but the debate regarding reform maintained a high profile for 12 years. Finally, in 2004, the reform was approved. For discussions of the Brazilian reform process, see Sadek (1998), Arantes (2001), and Gross Cunha (2007).

District of Brasilia; the vertical line identifies the overall mean of 44.09).⁹⁸. The cross-state variation in Figure 5.1 is stark. This variation underscores the fact that Brazil is “many Brazils” (“26 Brazils”, following Linz and de Miguel 1966), and that court resources vary greatly from one part of the country to another. Notably, the states that spend the most are a mix of small, sparsely populated states (Amapá, Acre, and Roraima) and large, densely populated states that include two of the country’s (and the world’s) largest cities (São Paulo and Rio de Janeiro), while many of the states that spend the least are in north or northeastern part of the country (Ceará, Maranhão, Pernambuco and Bahia), despite having sizeable populations.

Why do some state courts have more resources than others? Why is judicial spending higher in some states than in others? In short, what accounts for the variation in Figure 5.1?

⁹⁸ These amounts reflect the amounts budgeted by the state for the operation of state courts at the first and second instance. In Brazil, a first instance courthouse is a *foro* or *forum*, usually composed of several *varas*, i.e., “branches” or courtrooms that deal with different areas of the law, e.g., *vara criminal*. The state supreme court is a *Tribunal de Justiça*, or TJ. Spending allocated for federal courts and other special courts, e.g., labor or military courts, is not included. Unlike other areas of public spending (e.g., education or health), federal transfers do not cover judicial expenses at the state level. There are, however, occasional special transfers from the executive branch, but these special projects occur randomly, i.e., unsystematically, throughout the country and over time. Exchange rates and deflators are from the International Financial Statistics Database of the International Monetary Fund (IMF 2007; 2009), and population figures are from IBGE. All 26 Brazilian states appear along the Y-axis, and judicial spending per capita appears along the X-axis. The amount for each state represents the deflated and per capitized spending amount in constant 2000 reais, and the states are listed in descending order according to judicial budget per capita.

Figure 5.1. Variation in judicial spending per capita across the 26 Brazilian states.



5.3. Measuring Competition and Ideology in Brazil

In both the political-institutional and the judicial politics literatures, electoral competitiveness is most often measured as either margin of victory (Beer 2006), majority distance (Schedler 2005), divided government (Chavez 2004; Staton 2006) or, following Laakso and Taagepera (1979), as the effective number of candidates or parties (ENC or ENP).⁹⁹

In Brazil, there is broad variation in competitiveness across the states. Margin of victory ranges from essentially zero (0.002) in Acre (1991-1994), Rondônia (1991-1994), and Sergipe (1995-1998), to above 0.65 (Alagoas (1995-1998), Maranhão (1987-1990), and Paraíba (1999-2002)). Majority distance is lowest and highest in the same states just identified. ENC ranges from 1.46 in Maranhão (1987-1990) and 1.48 in Paraíba (1999-2002) to 5.07 in Rondônia (2003-2004) (see descriptive statistics in Table 5.1 for more

⁹⁹ Margins of victory are high in where a single party or coalition is dominant, and correspondingly low under conditions of competitive elections. Majority distance – margin of victory minus 50 (i.e., margin – 50) captures the distance between the victor’s share of the vote and half the electorate. Again, this number will be high where elections are non-competitive and high where competition is also high, but the variable will be positive where the winning party dominates by more than 50 percentage points. ENC requires a clarification with regard to measuring the competitiveness of a political system. This formula is often used to measure party system fragmentation, but adequately captures competitiveness in new democracies like Mexico and Brazil. Interparty competition is present when there are at least two political parties of comparable strength competing effectively for governor or for legislative seats in the state, and is low when a single party has a stranglehold on electoral competition (see also Beer 2003; Chavez 2004). In Mexico and Brazil, where provincial party systems are often dominated by a single party or coalition, ENC captures movement away from this authoritarian baseline. Thus, measures below two indicate the continuity of or movement toward single-party dominance, and measures above two indicate movement towards multipartyism. Divided government identifies all those instances in which the party that occupies the executive branch does not have either an absolute majority or a plurality in the legislature (Beer 2003; Ríos-Figueroa 2006; Iaryczower, Spiller, and Tommasi 2002; 2007). Other measures of competitiveness include Molinar’s (1992) adjusted measure of ENP, which weights the variable according to the dominance of a single party (see also Schedler 2005), party turnover (Spiller and Tommasi 2007), and margin of victory (Beer 2006; Cleary 2007). Studies that capture competitiveness as party turnover and then model judicial performance based on how actors anticipate that turnover rely on a very strong assumption about the “perfect foresight” that these actors have regarding future party turnover, and how this foresight shapes strategic behavior (see Iaryczower, Spiller and Tommasi 2002, 705). The other measures of competitiveness capture the political insecurity generate by electoral competition without making this kind of assumption.

information).¹⁰⁰ With regards to ENC, we are looking for any movement away from 2, since the two-party model was sanctioned by the military. Thus, reductions in ENC, as in Maranhão and Paraíba, signal decreased competitiveness and diversity of political actors. Upward movement away from 2 signals increased competitiveness and diversity.

Four measures capture the ideological orientation of the political system, or executive (governor) ideology. First, ideology-presence is a dummy variable (0,1), where “1” indicates the presence of either a leftist or a rightist party, and “0” indicates a centrist party. Second, dummy variables for “left” and “right” capture the presence of either type of party. Third, an ordinal measure (-1 to 1) captures ideology, where -1 = left, -0.5 = center-left, 0 = centrist/clientelist/unknown, 0.5 = center-right, and 1 = right. In Brazil, governors can be classified along all five points of this scale. Finally, a fourth measure offers an improvement on the ordinal variable, which forces all parties onto a 5-point scale of equidistant intervals. The improvement is based on survey data from Power and Zucco (2009), that codes Brazilian parties along a 10-point scale, where 1 = left and 10 = right. Each measure classifies parties according to the left-to-right organization described in Chapter 2, paying special attention to the rightward drift of the PSDB between 1993 and 1996. The Power and Zucco measure closely approximates the Salamanca data (Alcántara 2005) used in Mexico; both are 10-point scales based on surveys of federal legislators.

While the first measure (presence of ideology) captures only whether movement away from the ideological center influences judicial spending, the remaining measures

¹⁰⁰ $N = 1/\sum s_i^2$, where s_i equals the proportion of either votes or seats of the i -th party (Laakso and Taagepera 1979). For example, $N = 2.00$ where two parties each hold half of the seats in the legislature ($1/((.50)^2 + (.50)^2)$). $N = 1.00$ if one party were to completely dominate the legislature. Electoral data in Brazil is from the database of Jairo Nicolau (<http://jaironicolau.iuperj.br>) and the Tribunal Superior Electoral (www.tse.gov.br).

are able to identify directional effects along a left-to-right ideological space, distinguishing between left and right. The left-right ideological continuum is able to capture a linear relationship between ideology and spending, i.e., whether leftist politicians increase judicial spending more than rightist ones, or vice-versa. However, the empirical implication from the theory outlined above is that the *presence* of ideological commitments – both left and right – matters more than their direction. That is, ideology should have a curvilinear, “U-shaped” relationship with spending, captured mathematically by including both the linear and squared terms of the ordinal and interval ideology measures.

Recalling the theoretical arguments in Chapter 2 regarding the anticipated effects of competition and the positive effects of leftist and rightist parties, the expectations and measures above yield the following hypotheses.

- H1a:** *Judicial spending will vary negatively with margin of victory.*
- H1b:** *Judicial spending will vary negatively with majority distance.*
- H1c:** *Judicial spending will vary positively with ENC.*
- H1d:** *Judicial spending will vary positively with divided government and negatively with unified government IF re-election, signaling, insurance, or opportunity logics are stronger than the veto player logic.*
- H1e:** *Judicial spending will vary negatively with divided government and positively with unified government if the veto player logic is stronger than the re-election, signaling, insurance, or opportunity logics.*
- H2a:** *Judicial spending will vary positively with the presence of programmatic-ideological commitments.*
- H2b:** *Judicial spending will vary positively with both Left and Right governors.*
- H2c:** *Ideology has a curvilinear relationship with spending.*

5.4. Data and Methods

Data

Sections II and III above explain the data for judicial spending and the principal explanatory variables of electoral competitiveness and programmatic party commitments. The dependent variable is annual state-level judicial spending per capita. Brazilian budget data is from the Treasury Department's (*Ministerio da Fazenda, Secretaria do Tesouro Nacional*),¹⁰¹ collected and organized by IPEA. The raw annual judicial budgets are deflated so that amounts are comparable across time,¹⁰² converting current amounts to constant amounts, and the per capita transformation enhances comparability across states. Thus, the variable captures the annual judicial budget per capita in real terms, adjusting for inflation and using 2000 as the base year in Brazil (2000 = 100).¹⁰³ In Brazil, the data are logged to normalize the variable's distribution. The 22-year time span (1985-2006) includes years before and after the national transition to democracy in 1985-1989 that marked the end of the military regime. Thus, the sample captures wide variation in key independent variables of competition and ideology over pre-transition and post-transition years.

Finally, the three control variables are gross domestic product (GDP) per capita, population density, and election year. GDP figures control for broad differences in the

¹⁰¹ The local court budget develops in a contested process between the judiciary, executive, and legislative branches in the fall of each year, and the final amount allocated to the judiciary is then published in the official state reporters along with the rest of the state budget, usually in December, as the "Orçamento do Estado". The Treasury Department has been collecting this data from the states since at least 1985.

¹⁰² Deflation indices are drawn from the International Financial Statistics Database of the International Monetary Fund (IMF 2007; 2009). Transformations are the author's own using second quarter data from IMF. The second quarter is utilized because this likely corresponds with the information legislators and other politicians would have had available to them prior to preparing and negotiating the annual budget in the fall months of each year.

¹⁰³ Population figures for the per capita transformation are from the national statistics office, IBGE. The variable is logged to normalize its distribution.

level of development across states, and are from the IPEA and IBGE. Population density controls for the concentration of people and the general degree of urbanization. All states are expected to incur a minimum “floor” of court maintenance costs as part of economy of scale problems associated with state judiciaries. Similarly, small changes in already small budgets might appear large due to the per capita transformation. Population density controls for these factors. Population and territory figures for this variable and the per capita transformations are from IBGE. Election year is a dummy variable (0,1), where 1 identifies a year in which governor elections were held. This variable captures any budgetary increases associated with the electoral calendar. Table 5.1 reports descriptive statistics for all data.

Methods

The unit of analysis is the “state-year”. The panel dataset has 502 observations ($N = 502$). These observations come from all 26 Brazilian states, excluding the federal district. The time span ranges from 1985 to 2006, but data are available for varying numbers of years in each state and in each country, making the panels unbalanced. A minimum of 14 time points and a maximum of 22 time points are available. There are no gaps in the dataset. The unbalanced panel structure of the data generates several methodological challenges, as outlined in Chapter 3. Following the conclusions from that chapter, the large- N analysis applies a population-averaged panel-data model, or generalized estimating equation (GEE), with a forward-lagged dependent variable to capture temporal dynamics.¹⁰⁴

¹⁰⁴ Independent variables are measured at time t and the dependent variable at time $t+1$. See Chapter 3 for full discussion of methodological challenges with TSCS data and the tradeoffs involved in selecting the GEE model from among other options, e.g., OLS with panel-corrected standard errors (PCSEs), AR1

Table 5.1. Descriptive Statistics for Large-N Analysis in Brazil.

BRAZIL					
Time span: 1985-2006					
Variable	N	Mean	Std. Dev.*	Min.	Max.
Spending (log)	502	3.58	0.77	-1.27	5.69
Spending	502	45.86	31.93	0.28	295.08
Margin of victory	502	0.18	0.15	0	0.69
Majority distance	502	0.02	0.11	-0.26	0.31
ENC	502	2.53	0.64	1.46	5.07
Divided gov	502	0.66	0.48	0	1
Unified-plurality	502	0.70	0.46	0	1
Unified-simple	502	0.34	0.48	0	1
Unified-super	502	0.11	0.31	0	1
Ideology-presence	502	0.61	0.49	0	1
Left	502	0.16	0.37	0	1
Right	502	0.39	0.49	0	1
Ideology-ordinal	502	0.15	0.69	-1	1
Ideology-ordinal (sq)	502	0.50	0.43	0	1
Ideology-Power	502	5.84	1.84	1.89	8.65
Ideology-Power (sq)	502	37.43	21.38	3.57	74.82
PT	502	0.05	0.21	0	1
PPS	502	0.01	0.09	0	1
PSB	502	0.05	0.21	0	1
PDT	502	0.06	0.23	0	1
PSDB	502	0.14	0.35	0	1
PMDB	502	0.39	0.49	0	1
PTB	502	0.02	0.15	0	1
PSL	502	0.00	0.06	0	1
PFL	502	0.15	0.35	0	1
PDS	502	0.06	0.24	0	1
PPB	502	0.02	0.14	0	1
PPR	502	0.02	0.15	0	1
PSC	502	0.01	0.09	0	1
PTR	502	0.01	0.09	0	1
PDS-Legacy	502	0.12	0.33	0	1
GDP per cap (log)	502	8.35	0.51	7.22	9.44
Population density	502	46.31	64.00	1.04	344.04
Election year	502	.25	0.43	0	1
Volatility	444	55.88	24.39	2.69	100

* Overall standard deviation and minimum/maximum values. Stata also returns between and within values with *xtsum* command, but these are omitted for economy of presentation.

models, panel-specific AR1 models, lagged dependent variables, time dummies, and fixed effects models. All models estimated with Stata v9.0 using *xtgee*. Data and do-file available from the author.

5.5. Results

Tables 5.2, 5.3, and 5.4 report the results of the large-N analysis in Brazil. Each table reports the key independent variables first followed by the controls. Table 5.2 focuses on the measures of electoral competition: (i) margin of victory, (ii) majority distance, (iii) effective number of parties (ENC), and (iv) divided and unified forms of government (divided, as well as unified with plurality, simple, and super majorities). Divided government and unified-simple are perfectly but negatively correlated, so they are not included in the same model.

In Table 5.2, Models 1-3 examine margin of victory, majority distance, and ENC, respectively. Margin of victory is not statistically significant on its own. However, majority distance has a statistically significant and negative relationship with spending, and ENC has a statistically significant and positive relationship with spending. Both of these latter two relationships are in the anticipated direction. Models 4 and 5 examine the effect of divided government and the measures of unified government.

Table 5.2. GEE analysis of effect of competition on judicial spending in Brazil.

	1	2	3	4	5	6
margin of victory	0.06 (0.18)					0.39** (0.20)
majority distance (margin – 50)		–0.59** (0.28)				
ENC			0.18** (0.05)			
divided government				0.29** (0.07)		0.29** (0.07)
unified gov (plurality)				0.07 (0.07)	0.07 (0.07)	0.05 (0.07)
unified gov (simple)					–0.29** (0.07)	
unified gov (super)				–0.09 (0.10)	–0.09 (0.10)	–0.18 (0.11)
GDP per capita (logged)	0.41** (0.14)	0.42** (0.13)	0.42** (0.13)	0.40** (0.13)	0.40** (0.13)	0.40** (0.13)
population density	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
election year	0.06 (0.06)	0.06 (0.06)	0.07 (0.06)	0.08 (0.06)	0.08 (0.06)	0.08 (0.06)
constant	0.02 (1.14)	0.01 (1.11)	–0.42 (1.09)	–0.09 (1.10)	–0.09 (1.10)	–0.14 (1.10)
N	502	502	502	502	502	502
States	26	26	26	26	26	26
Years (max)	22	22	22	22	22	22
Years (min)	14	14	14	14	14	14
Wald χ^2	16.21	21.11	30.22	42.63	42.63	46.61
Prob > χ^2	0.0028	0.0003	0.0000	0.0000	0.0000	0.0000

In Model 4, the coefficient for divided government is positive and statistically significant.

Model 5 drops divided government and adds unified-simple; as expected, the results are the same as Model 4, but the coefficient for unified-simple is negative due to the perfect, negative correlation between divided government and unified-simple. Finally, Model 6 includes both margin of victory and the measures of divided and unified government.

Margin of victory is now statistically significant. However, against expectations, the

coefficient is positive. Divided government maintains its positive and statistically significant relationship, and none of the measures of unified government are significant. Of the control variables in this model, only GDP per capita is statistically significant, exerting an upward pressure on spending.

Building on this last model from Table 5.2, Table 5.3 adds measures of ideology. Notably, while margin of victory and divided government maintain positive and statistically significant relationships with spending, none of the measures of ideology are statistically significant. The most rudimentary measure of ideology – ideology-presence – is not significant. Increasing in measurement sophistication – from the dummy variables for leftist and rightist parties to Power and Zucco’s (2009) 10-point left-to-right scale – ideology is not statistically significant.

Table 5.3. GEE analysis of effect of ideology on judicial spending in Brazil.

	7	8	9	10
margin of victory	0.41** (0.20)	0.41** (0.20)	0.41* (0.20)	0.34* (0.20)
divided government	0.29** (0.07)	0.29** (0.07)	0.29** (0.07)	0.28** (0.07)
unified gov (plurality)	0.05 (0.07)	0.05 (0.07)	0.05 (0.07)	0.05 (0.07)
unified gov (super)	-0.17 (0.11)	-0.17 (0.11)	-0.17 (0.11)	-0.18 (0.11)
Ideology (presence) (non-PRI governor)	0.06 (0.05)			
Left (dummy)		0.07 (0.08)		
Right (dummy)		0.06 (0.06)		
Ideology-ordinal (-1 to 1)			0.01 (0.07)	
Ideology-ordinal (squared term)			0.12 (0.09)	
Ideology-Power (1-10)				0.11 (0.08)
Ideology-Power (squared term)				-0.01 (0.01)
GDP per capita (logged)	0.39** (0.13)	0.39** (0.13)	0.41** (0.13)	0.41** (0.13)
population density	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
election year	0.08 (0.06)	0.08 (0.06)	0.08 (0.06)	0.09 (0.06)
constant	-0.09** (1.10)	-0.07** (1.10)	-0.11** (1.10)	-0.39** (1.15)
N	502	502	502	502
States	26	26	26	26
Years (max)	22	22	22	22
Years (min)	14	14	14	14
Wald χ^2	48.38	48.41	49.59	49.49
Prob > χ^2	0.0000	0.0000	0.0000	0.0000

Coefficients with standard errors in parentheses.

** p < .01 * p < .05

Two aspects of Brazilian parties and ideology help understand and re-examine this non-finding. First, the conventional wisdom regarding Brazilian parties and the party system in general is that it is weak, unstructured and fragmented, marked by high levels of clientelism and patrimonialism, as well as party switching and what Brazilian observers term “ideological disloyalty” (Power 1988; Mainwaring, Meneguello, and Power 2000). In a word, the Brazilian party system suffers from historically low levels of institutionalization. The issue of institutionalization was considered early on in this research when faced with the differences between Mexico and Brazil and was noted in the theoretical discussion in Chapter 2. That is, there are clear differences in local party systems between the two countries that are not easily quantifiable, but that appear to shape the different results in each country. Mexico essentially has a three-party system. Moreover, this three-party system is strongly centralized, i.e., the three parties that are dominant at the national level are the same ones that are dominant in each and every state. Despite the presence of smaller parties, competition at the national and subnational levels is largely restricted to the PRD, PRI, and PAN. Further, a left-to-right ideological spectrum easily maps onto this party system at both levels of the regime. With a few minor caveats, the centralization and ideological structure of Mexico’s provincial party systems make the kind of analysis conducted here fairly straightforward in that country, which is reflected in the clear results in Chapter 4. As seen here, this is not the case in Brazil. In part, this difference is due to the fact that Brazil’s provincial party systems are highly decentralized and a left-to-right ideological spectrum does not map easily onto many local party systems, i.e., not all provincial party systems are institutionalized. Thus, one potential solution is to control for this level of institutionalization. Mainwaring

(1998) suggests electoral volatility as one proxy for party system institutionalization, so a re-examination of the results above could control for state-level electoral volatility.

Second, a key insight from Power and Zucco's analysis of Brazilian parties is that the ideological orientation of one of Brazil's largest parties – PSDB – has been changing over time. Indeed, the PSDB went from being a center-left party in the late 1980s and early 1990s – splintering leftward in 1988 from the centrist PMDB – to a center-right party in the late 1990s and the early 2000s. Where 1 identifies left and 10 identifies right, the PSDB moved from 3.98 in 1990 to 6.22 in 1997 (and continues to hold in the center-right category at 6.30 and 6.26 in surveys from 2001 and 2005, respectively) (Power and Zucco 2009).¹⁰⁵ Moreover, the rightward shift of the PSDB coincided with its rise to national prominence as the party occupied the presidency from 1995-2002, so its influence over subnational affiliates would have been strongest during this period and, as suggested by Power and Zucco, other parties also appear to have reacted to the PSDB's ideological movement. Thus, a second potential solution is to split the dataset into two sub-samples, 1985-1994 and 1995-2006, to examine the effect of ideology in two discrete time periods. Notably, splitting the dataset in this manner would also control for the stabilizing effect of the *Real* Plan in 1994, which started to have full effect in 1995.¹⁰⁶

¹⁰⁵ The PT has also shifted rightward, moving from the left to the center-left since the late 1990s (Power and Zucco 2009), but this pattern is less dramatic and less meaningful in the time span under examination. It would, however, be fruitful to examine the policy effects of the PT's changing ideology, especially since 2003 – the first year the party occupied the presidency.

¹⁰⁶ Adjustments in the dataset for currency changes between 1985 and 1994 should control for most of this effect. However, it is possible that the inflation-related instability may have been shaping judicial budgets in other ways prior to 1995, so this temporal control can be seen as reasonable. On the other hand, the Asian and Russian financial crises were felt acutely in Brazil in the late 1990s, so there is also instability after 1995. In any case, though the Real Plan began in 1994, it did not begin until mid-year, so 1995 offers the a good start year for a sub-sample of data. Since it is unclear when the PSDB moved to the right – Power and Zucco only note that this shift occurred between their two surveys conducted in 1993 and 1997, 1995 is also a reasonable start year for re-coding the PSDB.

Building on the last model in Table 5.3, Table 5.4 reports auxiliary models in Brazil that control for Pedersen's (1983) measure of volatility and also divide the sample into two sub-samples: 1985-1994 and 1995-2006. The results here are not meant to be definitive, but are intended as a heuristic device for understanding the differences in provincial party systems between Mexico and Brazil, and the ways in which these differences condition the effect of ideology.

Table 5.4. GEE analysis of spending, samples truncated by volatility and time.

	11	12 High vol 87-94	13 High vol 95-06	14 Low vol 87-94	15 Low vol 95-06
margin of victory	0.28 (0.21)	-1.30 (1.24)	1.04** (0.37)	0.38 (0.46)	1.60* (0.86)
divided government	0.15* (0.08)	-0.31 (0.40)	-0.01** (0.15)	-0.12 (0.18)	0.32 (0.23)
unified gov (plurality)	0.13* (0.07)	-0.09 (0.36)	-0.27 (0.17)	-0.07 (0.23)	0.26 (0.19)
unified gov (super)	-0.20* (0.12)	0.38 (0.47)	-0.04 (0.16)	-0.26 (0.31)	-0.50 (0.43)
Ideology-Power (1-10)	0.11 (0.09)	0.61 (1.20)	-0.00 (0.11)	-0.64** (0.23)	0.74** (0.22)
Ideology-Power (squared term)	-0.01 (0.01)	-0.04 (0.09)	-0.00 (0.01)	0.05** (0.02)	-0.08** (0.02)
Volatility (Pedersen)	0.01** 0.00				
GDP per capita (logged)	0.52** (0.14)	0.74** (0.28)	0.37** (0.18)	0.69** (0.22)	0.54* (0.31)
population density	0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)	-0.00 (0.00)	-0.00 (0.00)
election year	0.14** (0.06)	0.30* (0.18)	-0.00 (0.08)	0.24** (0.07)	0.19 (0.13)
constant	-1.57 (1.22)	-4.33 (4.13)	-0.86 (1.51)	-0.40 (1.84)	-2.88 (2.69)
N	444	68	152	110	114
States	26	14	23	19	20
Years (max)	20	8	10	8	10
Years (min)	10	4	2	4	2
Wald χ^2	55.07	27.63	19.71	34.00	34.66
Prob > χ^2	0.0000	0.0011	0.0198	0.0001	0.0001

Coefficients with standard errors in parentheses.

** p < .01 * p < .05

Model 11 includes volatility as a control, showing its statistical significance.

Models 12-15 proceed to divide the samples according to the level of volatility and the time period. Models 12 and 13 examine all observations with high volatility, i.e.,

volatility scores equal to or above the median (51.96), and Models 14 and 15 examine

observations with low volatility, i.e., scores below the median. Models 12 and 14 examine the first time period (1985-1994), and Models 13 and 15 examine the second time period (1995-2006). The results show that where volatility is high (Models 12 and 13) ideology continues to *not* be significant. That is, in environments of high instability, i.e., low institutionalization, ideology does not have a statistically significant effect. Conversely, in stable party environments, i.e., low volatility (Models 14 and 15), ideology has a statistically significant effect. This single finding – that volatility conditions the effect to ideology in the Brazilian states – is notable, and aligns with expectations regarding party system institutionalization (e.g., Mainwaring 1995). Further, in the early time period (1985-1994), the linear term for ideology is negative and the squared term is positive, suggesting a U-shaped relationship similar to the one found in Mexico. However, in the later time period (1995-2006), the relationship reverses, suggesting a bell-shaped relationship or inverted-U (i.e., “∩”).

Graphs of predicted values and marginal effects clarify further. Following Brambor, Clark, and Golder (2006), the significance of interactions and constitutive terms cannot be fully determined by simply inspecting the coefficients, standard errors, and z-values, requiring the computation of marginal effects and conditional standard errors. Figure 5.2 plots predicted values for the early time period, and Figure 5.3 reports marginal effects (with 95% confidence intervals), revealing the statistical significance of the effect of ideology on judicial spending across the full range of ideology between 1985 and 1994. In the marginal effects plots, relationships are statistically significant where the upper and lower bounds of the 95% confidence intervals are either *both above* or *both below* the horizontal line at zero (Brambor et al., 73-76). Similarly, Figures 5.4 and 5.5

graph predicted values and marginal effects, respectively, for the later time period, 1995-2006.

Figure 5.2. Predicted values of spending (low volatility; 1985-1994).

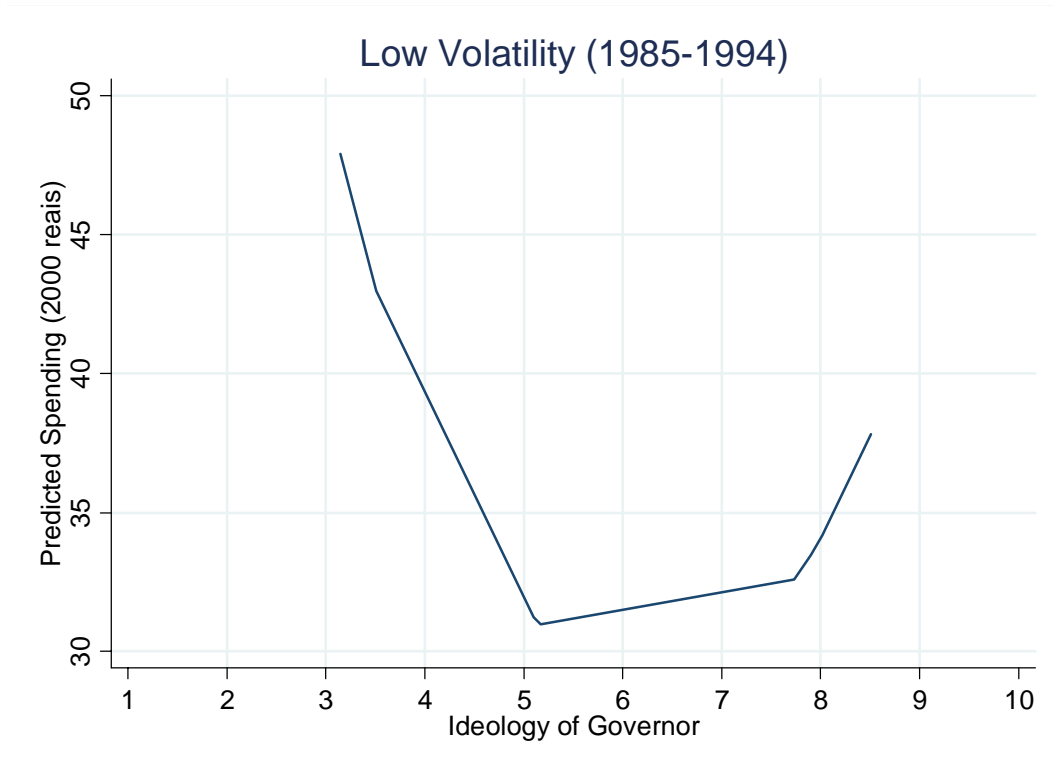


Figure 5.3. Marginal effects of ideology (low volatility: 1985-1994).

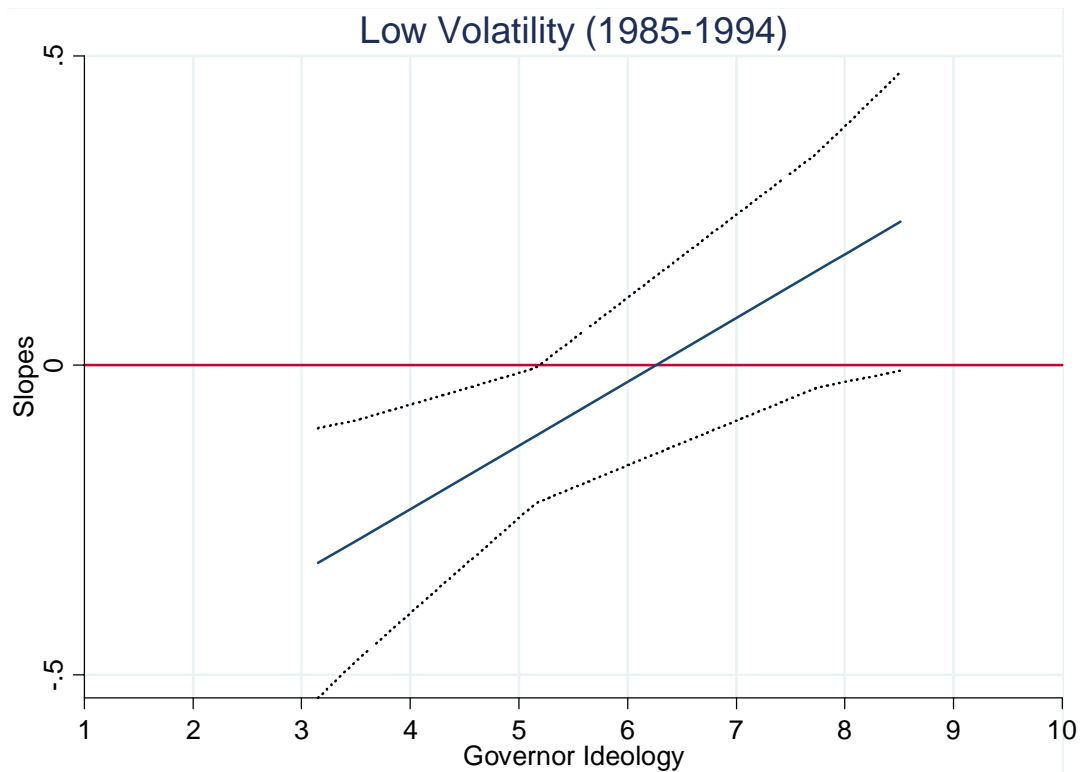


Figure 5.4. Predicted values of spending (low volatility; 1995-2006).

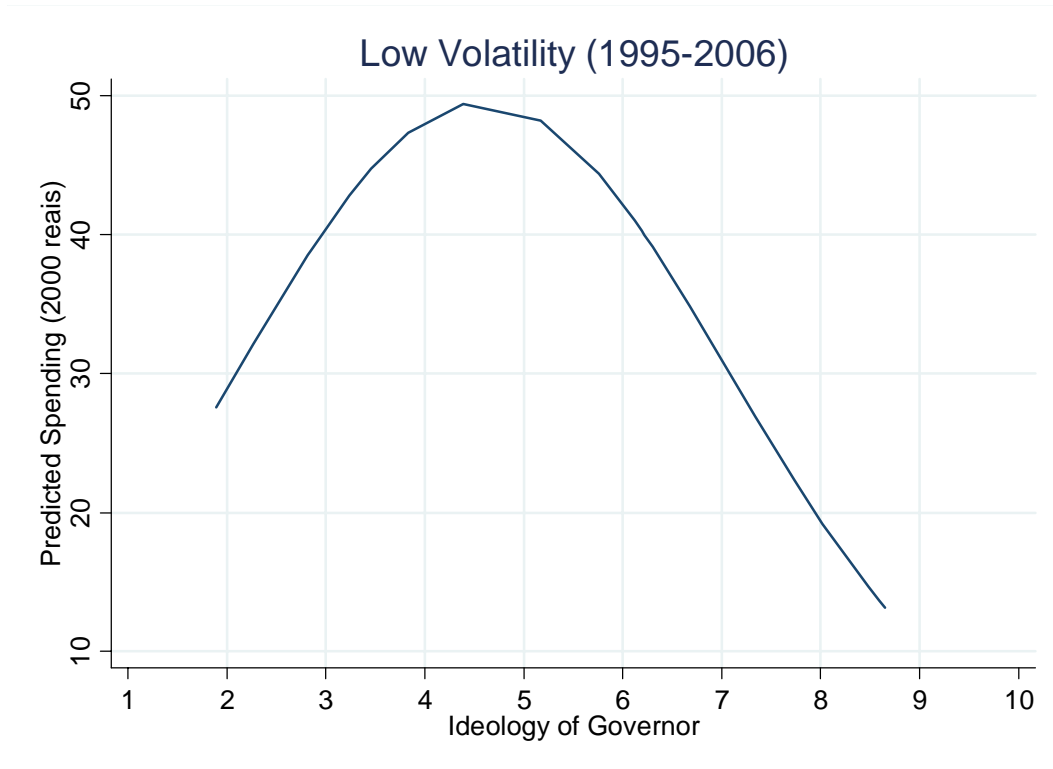


Figure 5.5. Marginal effects of ideology (low volatility; 1995-2006).

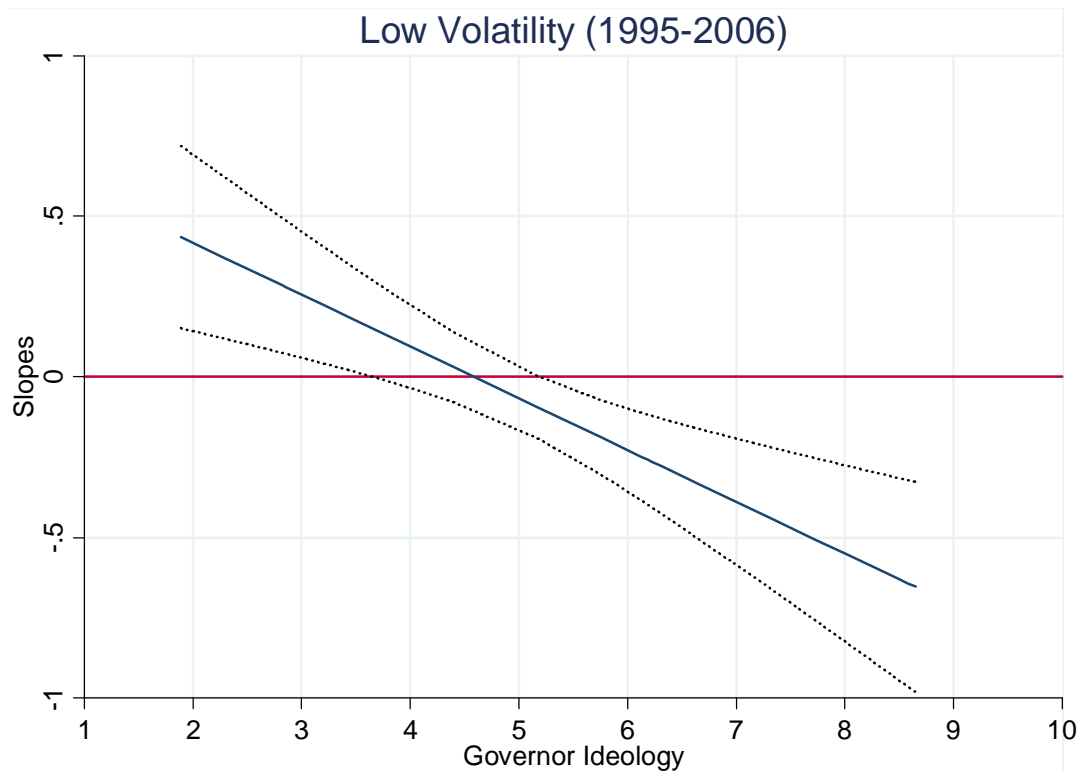


Figure 5.2 resembles the U-shaped relationship discerned in Mexico. As was the case in Mexico, the left prong of the “U” is higher than the right, indicating the left and right spend more than their centrist counterparts, but that the left spends more than the right. Also, the marginal effects plot in Figure 5.3 shows that the upper and lower bounds of the confidence interval are both below zero to the left of an ideology score of approximately five (5), but the bounds are never both above zero on the right. Thus, while the U-shaped relationship suggests both the left and the right spend more than center, Figure 5.3 shows that only the left has a statistically significant relationship with spending. Notably, the left in these cases is composed of the PDT in Espírito Santo (1991-1994), Rio de Janeiro (1991-1994), and Rio Grande do Sul (1991-1994). Thus, the results from pre-1995, institutionalized provincial party systems reduce to the finding that the PDT exerts a statistically significant upward pressure on judicial spending.¹⁰⁷

This U-shaped relationship familiar from Mexico, however, reverses from 1995 forward, forming a bell-shaped curve. The curve is skewed slightly to the left, peaking at an ideology score of approximately 4.5. The location of the peak and the left-skew of this curve suggest center-left administrations spend the most on courts. Notably, this finding

¹⁰⁷ The PSDB governed Ceará from 1991-1994, but the volatility score was 61.21, above the median, so it is not included in the sample of “institutionalized” provincial party systems. In fact, the difference in state executives in each of these cases helps to understand how the effect of ideology is conditioned by institutionalization. For example, the governors elected in Rio de Janeiro and Rio Grande do Sul – Leonel Brizola and Alceu Collares, respectively – were standard-bearers of the left: Brizola and Collares were both originally from the progressive PTB in pre-dictatorship Rio Grande do Sul, and were prominent figures of the pre-dictatorship left. When Jânio Quadros left the presidency in 1961 and vice-president João Goulart (“Jango”) was supposed to succeed, the military and conservative factions were opposed to Goulart’s progressive credentials, threatening to block the succession. Brizola led a “campaign for legality” from Rio Grande do Sul, helping Goulart to the presidency and keeping the existing regime rules in place, though this was short-lived given the coup happened in April 1964. Brizola also lived in exile for most of the military regime. In Ceará, in contrast, the PSDB brought Ciro Gomes to the governor’s office, a politician who between the 1970s and the present had migrated from the pro-military ARENA and PDS, through the PMDB and PSDB, to the PPS and PSB, all the while maintaining ties to the right-wing PFL. In contrast to the fairly consistent ideological position of Brizola and Collares, Gomes looks more like a political opportunist (*BBC* 2002; *Folha de São Paulo* 2002).

is still consistent with the positive effect of parties like the PDT. However, the plot of marginal effects shows the relationship between ideology and spending is statistically significant only to the left of approximately 3.5 and to the right of approximately 5.5, as predicted values taper downwards. That is, leftist and rightist administrations dampen spending from 1995 forward, and centrist, perhaps center-left administrations, appear to spend the most, though the statistical significance of the relationship between center-left and centrist administrations is less clear.

These results are supported by a final approach to examining ideology. Rather than force parties into an ordered, left-to-right spectrum, Table 5.5 reports models using party dummies. This model is the equivalent of Model 9 in Mexico (see Table 4.3).¹⁰⁸ All parties that reached the governor's office are represented. From left to right, these are PT, PPS, PSB, PDT, PSDB, PMDB, PTB, PSL, PFL, PDS, PPB, PPR, PSC, and PTR. Given the related origins of the last five parties, these are all grouped under one variable, PDS-Legacy.¹⁰⁹ Model 16 drops the PMDB as the modal category. To check for robustness, Model 17 drops the PDS-Legacy variable, treating it as the base category. As was the case in the previous table, the full sample is analyzed and then split into two time periods. Models 16a and 17a examine the early time period (1985-1994) and Models 16b and 17b

¹⁰⁸ Model 9 in Mexico and Model 16 here were used to generate the typicality scores in Chapter 3.

¹⁰⁹ The PFL is not grouped with these parties even though it also arose from the PDS. Most scholars analyze the PFL separately and group the PDS-PPR-PPB together (e.g., Mainwaring, Meneguello, and Power 2000; Power and Zucco 2009). The PDS grew out of the pro-military ARENA in 1982, and became the PPR in 1993 (after fusing with the PDC). In the same year, the conservative PST and PTR fused to form the PP, which fused with the PPR (formerly PDS) in 1995 to form the PPB, which in 2008 went back to calling itself simply the PP (Mainwaring, Meneguello, and Power 2000, 183-192; Ames 2003; Power and Zucco 2009). The center-right PSC had one administration – that of Gerardo Bulhões in Alagoas (1991-1994). However, Bulhões was originally from ARENA and the PDS (Teofilo 2006). Similarly, the PTR had one administration – that of Osvaldo Piana Filho in Rondônia (1991-1994). Ames and Keck (1995) describe Piana as belonging to traditional elites in the state. In any case, the PTR merged in 1993 with the PST to form the PP as mentioned above. See Appendix D for models that separately analyze the parties grouped under PDS-Legacy.

examine the later time period (1995-2006). There is no control for volatility because the analysis focuses on party effect, not on the effect of a left-to-right spectrum.

Table 5.5. GEE analysis of effect of party dummies on spending, truncated by time.

	16	16a 85-94	16b 95-06	17	17a 85-94	17b 95-06
margin of victory	0.53** (0.20)	0.16 (0.31)	0.79** (0.30)	0.54** (0.20)	0.25 (0.30)	0.79** (0.30)
divided government	0.21** (0.07)	0.18 (0.11)	0.14 (0.12)	0.22** (0.07)	0.21* (0.11)	0.14 (0.12)
unified gov (plurality)	0.03 (0.07)	-0.08 (0.12)	0.05 (0.10)	0.02 (0.07)	-0.08 (0.12)	0.05 (0.10)
unified gov (super)	-0.23** (0.11)	-0.08 (0.16)	-0.27* (0.16)	-0.23** (0.11)	-0.11 (0.16)	-0.27* (0.16)
PT	-0.04 (0.13)	dropped	-0.17 (0.15)	0.18 (0.14)	dropped	0.11 (0.20)
PPS	0.04 (0.28)	dropped	-0.09 (0.31)	0.26 (0.29)	dropped	0.19 (0.32)
PSB	0.05 (0.14)	dropped	-0.11 (0.16)	0.27* (0.15)	dropped	0.18 (0.23)
PDT	0.23* (0.12)	0.33** (0.17)	0.21 (0.19)	0.45** (0.14)	0.44** (0.19)	0.50** (0.24)
PSDB	0.27** (0.09)	0.02 (0.30)	0.05 (0.13)	0.49** (0.11)	0.13 (0.11)	0.34* (0.20)
PMDB				0.22** (0.08)	0.11 (0.09)	0.29** (0.18)
PTB	-0.26 (0.22)	0.11 (0.28)	-0.45 (0.38)	-0.03 (0.22)	0.19 (0.29)	-0.16 (0.36)
PSL	-0.03 (0.42)	dropped	-0.15 (0.46)	0.21 (0.43)	dropped	0.14 (0.44)
PFL	0.09 (0.09)	0.13 (0.12)	-0.18 (0.17)	0.32** (0.10)	0.25* (0.14)	0.11 (0.20)
PDS – Legacy	-0.26** (0.08)	-0.19* (0.10)	-0.29 (0.18)			
GDP per capita (logged)	0.30** (0.14)	0.54** (0.17)	0.26 (0.18)	0.31** (0.14)	0.56** (0.17)	0.26 (0.18)
population density	0.00 (0.00)	-0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)	-0.00 (0.00)	-0.00 (0.00)
election year	0.11** (0.05)	0.16** (0.06)	0.09 (0.08)	0.11** (0.05)	0.14** (0.06)	0.09 (0.08)
constant	0.75 (1.17)	-1.13 (1.37)	1.36 (1.51)	0.45 (1.16)	-1.43 (1.36)	1.07 (1.51)
N	502	236	266	502	236	266
States	26	26	26	26	26	26
Wald χ^2	74.39	48.66	27.57	72.13	46.23	27.57
Prob > χ^2	0.0000	0.0000	0.0035	0.0000	0.0000	0.0355

Coefficients with standard errors in parentheses. ** p < .01 * p < .05

Model 16 shows that the center-left PDT and the PSDB exert a positive and statistically significant effect on spending. Meanwhile, the PDS-Legacy parties exert a negative and statistically significant effect on spending. The positive effect of the PDT and the negative effect of the PDS-Legacy parties remain in the sub-sample of the early time period (1985-1994), but the PSDB is no longer statistically significant. None of the parties exert a statistically significant effect in the later time period (1995-2006). Notably, these results should be read in relation to the omitted base category, the PMDB.

Model 17, omitting PDS-Legacy parties, complements these results. The PDT and PSDB exert a positive and statistically significant effect, and these two parties are joined now by the PMDB and PFL. However, in the sample of the early time period, only the PDT and PFL exert their positive and statistically significant relationship. In the later time period, only the PDT, PSDB, and PMDB maintain this relationship.

It should be noted that in these models, margin of victory and divided government consistently maintain their previous positive and statistically significant relationship with spending. Moreover, unified-super is consistently significant and exerts a negative pressure on spending.

Regarding the control variables, GDP per capita continues to exert a positive and statistically significant effect on spending. The control for election years is also consistently positive and significant. Population density is never statistically significant.

5.6. Discussion

The findings regarding competition in Brazil offer mixed support for the expected positive relationship between electoral competition and spending. The consistently

positive coefficient for margin of victory suggests that noncompetitive elections strengthen spending, cutting against expectations and contrasting sharply with the consistently negative sign on margin of victory in Mexico. This is a puzzling result and requires further attention in the future. Additional research may examine the relationship between margin of victory and the nature of the Brazilian party system. For instance, given the volatility or low institutionalization of many provincial party systems, changes in the margin of victory may be a much more regular occurrence than in Mexico. Another reason may be related to magnitude of support for certain leaders in the post-authoritarian context. Perhaps those governors elected with a large share of the vote – a mandate – may feel more at ease in spending greater amounts on the courts.

A third reason may relate to the historical development of the Brazilian party system. In contrast to Mexico, where a single party ruled for 71 years, the military regime forced the existence of an official two-party system that may have hardened sympathies in one direction or another at the local level. That is, rather than having a hegemonic party and opposition parties that have slowly tried to erode the dominant party's hegemony, Brazil had an official party of the regime and an official, sanctioned opposition party. As the transition to democracy began in 1985, the main, pro-military party (PDS) suffered from numerous defections and “shrank to less than a third of its size in 1983” (Mainwaring, Meneguello, and Power, 177). Thus, perhaps the dissolution of a two-party regime generates different reasons for greater margins of victory than the dissolution of a single-dominant-party regime.

Balancing the unexpected finding regarding margin of victory, ENC was statistically significant and in the anticipated positive direction. That is not simply to say

that democracy is good for courts. Rather, two parties are better than one, three are better than two, and so forth. Further, majority distance – which is based on the margin of victory data – is statistically significant and has the expected negative relationship with spending. Finally, divided government is consistently positive and statistically significant. Moreover, in the last set of models (Table 5.5), unified-simple was consistently negative and statistically significant. Both of these results support the conclusion that competition strengthens spending.

The results regarding ENC, majority distance, and divided government align with a growing literature on the positive effects of increasing electoral competition in new democracies (Rodriguez 1998; Beer 2001; 2003; Hecock 2006). Moreover, this result resonates with findings regarding the positive effect of competition that are specific to the strength of the judiciary (Chavez 2004; Beer 2006; Ríos-Figueroa 2007), including the results from Mexico in Chapter 4. Thus, the rising level of interparty competition in Brazil appears to bode well for courts.

However, the findings do not clarify the causal logics underlying competition. As stated earlier, the general expectation regarding electoral competition relies on different causal accounts, including re-election, signaling, insurance logic, and opportunity logics. The statistical analysis presented here offers results that support direction of the outcome anticipated by these causal logics, but does not adjudicate among these logics.

The findings do, however, clarify whether one causal logic is at work – the veto player logic. Veto player theory anticipates that increased competition generates more obstacles to policy change, not less. Thus, where divided government is present, i.e., at least two veto players, spending increases should be more difficult. Conversely, spending

increases should be easiest where government is unified. This is not the case in Brazil. Divided government has a positive and statistically significant relationship with spending, and, where unified-simple or unified-super are significant (indicating single-veto-player environments), the coefficient on these variables is negative. In short, the findings cut against the expectations of veto player theory, but they do not resolve the issue of which of the other causal mechanisms are driving judicial spending.

Regarding ideology, the findings in Brazil initially suggested there might not be a statistically significant effect exerted by ideology (Table 5.3). However, once the models controlled for volatility and time period by dividing the full data sample into low volatility and high volatility sub-samples, as well as pre-1995 and post-1994 sub-samples, statistically significant relationships began to emerge. In these analyses (Table 5.4), the conclusion emerges that party system institutionalization conditions the effect of ideology. In both samples of institutionalized party systems (low volatility), ideology exerted a statistically significant effect. Moreover, institutionalization matters more than the time period, as ideology is never statistically significant in the high volatility sub-samples, regardless of the time period. Focusing on the low volatility sub-samples – and on the plots of predicted values and margin effects in Figures 5.2-5.5 – the center-left exerted a strong, positive, and statistically significant effect on spending between 1985 and 1994. These center-left administrations – the left, statistically-significant prong of the “U” in Figure 5.2 – are all PDT administrations: Espirito Santo (1991-1994), Rio de Janeiro (1991-1994), and Rio Grande do Sul (1991-1994).

Overall, the PDT exerts the most consistent upward pressure on spending, evidenced by the “U” shape in Figure 5.2, the significance of the center-left in Figures

5.4 and 5.5, and by the results in the analysis of party dummies. The PDT was the most consistently positive and statistically significant party in that analysis. In the center of the ideological spectrum, Figures 5.4 and 5.5 support the conclusion that the PSDB and PMDB exert an upward pressure on spending from 1995 forward. There is also support for their positive effect in the analysis of party dummies, though the substantive significance of the PDT and PSDB is greater than that of the PMDB.

Finally, on the right side of the ideological spectrum, the PDS-Legacy parties exert a negative influence relative to their centrist counterparts (namely, the PMDB), and the PFL exerts a positive influence when compared with other parties on the right (the PDS-Legacy parties). This last set of findings is important for two reasons. First, the positive influence of the PFL and the negative influence of the PDS-Legacy parties helps explain why it is difficult to get consistent results regarding ideology when using a left-to-right category to capture all parties. The PFL and the PDS-Legacy parties are virtually indistinguishable from each other on Power and Zucco's (2009) scale, all of them clustered on the right end above a score of seven (7). However, the results suggest strong differences among them, differences that would be obscured by the ideology scale, and that would therefore appear as confounding results in a statistical analysis. For instance, in the U-shape in Figure 5.2, the right prong of the U is not statistically significant according to the marginal effects in Figure 5.3. This may be due to the fact that the PFL is pushing spending up while the PDS-Legacy parties are pulling spending down, generating a curve that does not appear to be statistically significant. Indeed, this result illuminates the overall findings in Brazil and helps to understand the contrast with Mexico. Specifically, whereas Mexico has three main parties that map cleanly onto left,

center, and right positions, Brazil has multiple parties at each position, and the parties at each position exert effects that vary in direction and statistical significance. Second, that fact that the PFL exerts a positive, statistically significant effect coincides with the anticipated curvilinear relationship between ideology and spending, i.e., that both leftist and rightist parties should promote court strength. However, the finding demonstrates that, in Brazil, only part of the right exerts a positive pressure, while another of the right (PDS legacy parties) exert a negative one.

The most striking result of the analysis presented here is the fact that the PT is not statistically significant in a positive direction. In the U-shaped curve in Figure 5.2, where the center-left exerts a strong upward pressure on spending, the PT is not included. The time period is 1987-1994, and the PT did not win its first governor's race until 1994 (inaugurated in January of 1995 in Espirito Santo). Similarly, in the analysis of party dummies, the PT is never significant. The only instance where the PT is significant is in Figures 5.4 and 5.5, where the left exerts a downward pressure on spending between 1995 and 2006.

5.7. Conclusion

Electoral competition exerts an upwards pressure on spending, but the results do not adjudicate among rival or potentially competing causal logics. The only causal logic that the results cut against is the veto player logic, since divided government has a positive relationship with spending, unlike the findings in Mexico.

While the results regarding ideology are initially complicated, the more robust pattern that emerges once the analysis controls for institutionalization and time period, as

well as party dummies, is the positive effect exerted by the PDT, PMDB, PSDB, and PFL, and the negative effect exerted by PDS legacy parties. Of these findings, the one regarding the PDT is the most consistent. However, a conservative interpretation of the large-N results suggests that centrist and center-left parties exert an upward pressure on spending, and this includes the PDT, PMDB, and PSDB.

As discussed above, the positive effect of the right-wing PFL and the negative effect of PDS legacy parties highlights the need in Brazil to distinguish between parties that are similarly situated along a left-right spectrum, and also helps us understand how the disparate effects of similarly situated parties might be obscuring correlation-based results in the statistical analysis.

Furthermore, the negative drain of the PDS legacy parties highlights a connection with the results regarding the PRI in Mexico. Specifically, the results suggest that the ideological location of the base of authoritarianism in Brazil may be driving some of the results. Stated otherwise, the ideological location of the main opposition parties may exert the strongest positive effect on court strength. For instance, the base of authoritarianism was in the center in Mexico, and the main opposition to the PRI came from both the PRD and PAN, but earlier and most dramatically from the PRD, which represented a democratizing current that split from the PRI in the 1980s to form its own party after the 1988 elections. In contrast, the base of authoritarianism in Brazil was on the right, represented by the pro-military ARENA and later the PDS and PDS legacy parties. The official opposition movement – the MDB – transformed into the centrist PMDB, which exerts a positive pressure on judicial spending in the analysis. The PDT and PSDB – also early and prominent opponents of the PDS legacy parties, exert a

similarly positive effect. Thus, the authoritarian baseline appears to have a lasting negative legacy, here and in Mexico, while the opposition parties exert a positive effect.

The lack of a significant relationship between the leftist PT and spending confounds this result. Theoretically, the PT should be one of the strongest ideological counterweights to the PDS legacy parties, and therefore lead a charge of institutional building, which should translate into judicial change. The qualitative phase of research in Brazil shows that there has sometimes been a tense relationship between the strongest party on the left, the PT, and local judicial leaders. Historically, leftist politicians express an anti-elitist sentiment against judges, and this can translate into tensions or rivalries between judicial leaders and leftist politicians where the judiciary is already relatively strong. That is, in states where the judiciary has achieved a certain level of institutional strength, anti-elitist attacks by the left can be seen as eroding judicial strength, not building it. This also became a source of tension in the 1990s and early 2000s as the PT led the national judicial reform effort. The PT's support for external mechanisms of control and accountability caused some judges in states with strong courts to perceive the PT as a threat to their own autonomy. That is, external control over institutions that are already strong suggests existing strength will be attenuated. However, in states where the judiciary is still weak and underdeveloped, leftist politicians can exert a positive, institutional-building effect by drawing attention to this weakness and the weakening effect of traditional elites. The nature of this conditional relationship between the left and judicial strength is explored in greater detail in the small-N analysis in Chapter 7.

Despite the tension between the PT and some strong courts, there are groups of judges with center-left or left-leaning policy preferences. For example, in the southern

state of Rio Grande do Sul, there is a strong affinity between many judges and the center-left PDT dating back to the administration of PDT governor Alceu Collares (1991-1994). In fact, this evidence coincides with the statistically significant effect of the center-left in Brazil, and the greater upward pressure that the center-left exerts on spending than the left. This relationship is also explored in greater detail in Chapter 7, seeking confirmatory evidence of the kind Lieberman (2005, 448) suggests might lead to a reasonable endpoint in the analysis, i.e., his “endpoint I”, providing causal links that support the large-N analysis and the “well-predicted” character of the case.

In this regard, Chapters 6 and 7, which follow, both seek this kind of confirmatory evidence in the model-testing cases. The small-N analysis also seeks to understand the process-based evidence in light of the model for the other cases, identifying ways in which the cases support the theoretical model, undermine it, or suggest new explanations. The next chapter turns to this phase of analysis in Mexico.

6. Small-N Analysis in Mexico: Aguascalientes, Michoacán, and Hidalgo

Tanto por la concepción ideológica, como por la amistad [y la] lealtad, [permanecemos] al lado de [los Cárdenas]. [Con la educación y las experiencias profesionales] se refuerza ... la semilla ideológica heredada familiarmente, con la concepción de un estado moderno, democrático y de derecho.
Anonymous interview, Michoacán¹¹⁰

Mi formación profesional como abogado más la sensibilidad respecto que [el sistema de justicia] era un factor crítico para la competitividad [económica] del Estado, me hizo llegar a la conclusión de que quizá era un buen momento para ... hacer una reforma.
Fmr. Gov. Otto Granados Roldán, Aguascalientes¹¹¹

El funcionamiento pleno de la judicatura tiene un alma eminentemente económica.
Anonymous interview, Aguascalientes¹¹²

La reforma del consejo judicial fue un proyecto político.
Anonymous interview, Hidalgo¹¹³

6.1. Introduction

Building on the findings from the quantitative analysis, the qualitative examination here traces the political logic of judicial change in three Mexican states: Aguascalientes, Michoacán, and Hidalgo. While the large-N portion of the analysis in Chapter 4 finds average effects supporting the positive relationship between competition and spending, multiple causal logics might underlie this relationship. In order to address this problem of behavioral equivalence, the qualitative analysis presented here

¹¹⁰ Translation: “Because of ideological conception as much as friendship [and] loyalty [we remained] on the side of [the Cárdenas family]. [Education and professional experience] reinforced ... the ideological seed inherited through family, with the conception of a modern and democratic rule of law” (Interview 38).

¹¹¹ Author interview. Translation: “My professional training as a lawyer, plus the sensibility I had regarding the critical role of the justice system for the state’s economic competitiveness, led me to conclude that perhaps it was a good time for reform.” Granados Roldán was speaking of his motivations in 1994 for the state’s judicial reform.

¹¹² Translation: “The full [or complete] operation [or performance] of the judiciary has an eminently economic motivation” (Interview 47).

¹¹³ Translation: “The judicial council reform was a *political project*” (Interview 3; emphasis added). In characterizing the reform as a political project, the interviewee was noting that it was not a serious reform. Rather, the 2006 reform in Hidalgo, discussed in detail below, was a superficial reform motivated essentially by narrow political interests, i.e., political ambition.

adjudicates among alternate causal logics underpinning electoral competition. Moreover, building on the strong findings of a relationship between ideology and judicial strength in the large-N analysis, the small-N analysis in this chapter seeks to understand the mechanisms and motivations underlying the pronounced U-shaped relationship between party identity and spending that was so striking in Mexico – compelling evidence that the leftist PRD and rightist PAN both strengthen courts more than the previously dominant PRI, and that the PRD strengthens courts more than even the PAN. Thus, in addition to adjudicating among rival and potentially contradictory causal logics underlying the relationship between electoral competition and court strength, the analysis in this chapter also seeks to identify the causal logics or mechanics of the relationship between political ideology and court strength. In sum, this chapter offers a finer examination of the political origins of local judicial strength in Mexico.

Recalling the rationale for case selection discussed in Chapter 3, Aguascalientes is a well-predicted, model-testing case, and is therefore a promising case in which to flesh out the theory that electoral competition and ideology exert positive pressures on court strength. Aguascalientes is also a case of rising competition in which the rightist PAN has ascended to power. Thus, in order to capture the variation of Mexico's subnational electoral-ideological landscape, the research design includes two other states – Michoacán and Hidalgo – to complete the cases selected for small-N, controlled comparisons in this chapter. Where Aguascalientes represents movement away from the authoritarian baseline in a rightward direction, Michoacán represents movement away from the authoritarian baseline in the form of rising competition and a leftward shift in administrations. The PRD won the governor's office in 2001, and has since been re-

elected in 2007. Finally, Hidalgo represents the continuity of the authoritarian baseline – non-competitive elections dominated by the PRI. Indeed, as of 2009, the PRI has held the governors office and a legislative majority in Hidalgo for 80 years. In this regard, Hidalgo is the Mexican equivalent of Brazil’s Maranhão.

Additionally, it should be noted that while Aguascalientes is a model-testing case because it is well-predicted and exhibits variation on the key independent variables of competition and ideology, the change in ideology reflects a rightward PRI-to-PAN transition. That is, the state is not emblematic of the most significant ideology finding in the large-N analysis, namely, that the leftist PRD builds judicial institutions more than either the PAN or the PRI. Stated otherwise, Aguascalientes is a good model-testing case, but needs to be judged against the other cases, especially against Michoacán, to assess the effect of ideology. Notably, Michoacán is also a good model-testing case. Both Michoacán and Hidalgo are well-predicted (see Table 3.1 and Figure 3.2). Indeed, Michoacán in 2006 contributes the most well-predicted observation in the large-N analysis, and both states have average typicality scores below the mean (Hidalgo has the lowest average scores in Figure 3.2). However, Michoacán also has variation over time on key independent variables. Thus, given its typicality scores and leftward, PRI-to-PRD transition, Michoacán also constitutes a good model-testing case.

In sum, the three selected cases represent the trilogy of political contexts in the Mexican states: Hidalgo represents PRI continuity, Aguascalientes rightward PRI-to-PAN transitions, and Michoacán leftward PRI-to-PRD transitions. All three cases qualify as “well-predicted” in the statistical analysis in Chapter 4, and Aguascalientes and

Michoacán are both good model-testing cases. How have courts fared in these different political-electoral contexts within Mexico?

The chapter is organized as follows. The first part of this chapter defines “court strength” along three dimensions: (i) judicial spending; (ii) institutional design; and (iii) career structure. This first part also classifies the three states examined here – Aguascalientes, Michoacán, and Hidalgo – along these dimensions, identifying the strongest and weakest judiciaries and ranking them “low” through “high”. Change across these three dimensions reveals the strengthening (progressive, positive reform) or weakening (corrosive, negative counter-reform) of courts. Thus, *change* and *reform* are often used interchangeably here but reforms are also distinguished from counter-reforms. The second part of the chapter focuses on tracing the causal process of change in each state, emphasizing critical turning points or markers of change, and identifying mechanisms and motivations that give a more textured, process-based account of causation than the correlation-based, average effects of the statistical analysis. The final section synthesizes the main lessons from the process-based analysis.

Forecasting the main findings ahead, this chapter makes three principal arguments. The arguments address (1) causal logics underpinning electoral competition; (2) the important role of ideas and ideology, as well as the extent to which their effects are conditioned by the baseline condition of the judiciary and the timing and sequence of reform efforts; and (3) the manner in which policy change moves across different levels of the regime.

First, three of the main causal logics that frequently underlie electoral competition – re-election, signaling, and insurance – do not receive empirical support. In

contrast, the logics of opportunity and veto players do receive support. Further, a “patronage-preserving” logic emerges that, though closely related to the policy-preserving logic of Hirschl (2004) and Gillman (2002; 2006), is distinct in that (a) the patronage preservation is non-ideological and (b) it yields no real gains in court strength. Notably, the opportunity logic, which treats judges as key actors in the political logic of institutional change, anticipating how political openings generate incentives for judge-led reform initiatives, is understudied in judicial politics.¹¹⁴ Moreover, the latter two logics cut against conventional accounts of electoral competition in that they expect negative consequences from increasing competition. The veto player logic anticipates that increasing competition hinders policy change, and the patronage-preservation logic identified here describes how traditional elites engage in corrosive, non-ideological protection of patronage, which differs from both Hirschl’s positive logic of the entrenchment or preservation of liberal values and policies and Gillman’s entrenchment under ideological “partisan coalitions”. Thus, the analysis explores the negative consequences of the entrenchment of traditional, illiberal elites in new democracies, and the possible negative consequences of electoral competition in new democracies more generally. However, the analysis also emphasizes that expectations regarding the content or direction of policy change are incomplete and imprecise without information regarding preferences and ideology. For instance, single-veto-player environments facilitate policy change, but only if dominant political actors actually *want* to change policy.

Second, courts are strongest in Michoacán, resulting from a sustained reform effort by the left-of-center PRD and ideologically sympathetic judges that overcame

¹¹⁴ See Hilbink (2007b) for a discussion of this logic in Spain’s transition to democracy.

resistance from the traditional PRI and conservative judicial elders. Court strength is moderate in Aguascalientes, with gains led by a reformist, market-oriented PRI governor. In this regard, despite bearing the party label of the PRI, this politician was closer ideologically to the secular, neoliberal wing of the PAN. However, these reforms were largely eroded by subsequent counter-reforms promoted by a PAN administration and conservative judicial elders. The PAN in Aguascalientes (and in this region of Mexico, more generally) has a traditional, Catholic base, so the reform and counter-reform process in this state is consistent with theoretical expectations and also highlights the importance of understanding intra-party ideological variation. Both cases offer support for the important role of ideas, as well as the role of extrajudicial activity by judges to shape the reform agenda and change the preferences of politicians. In both states, ideas and ideology matter. Also in both states, these cultural-ideational influences travel not only across levels of the regime, but also find some of their origins and development outside Mexico. For instance, Spanish-trained judges were critical to the successful reform effort under the PRD in Michoacán. Finally, Hidalgo has the weakest courts, resulting from the non-competitive and non-ideological PRI-controlled context, where neither politicians nor judges appear to be seriously committed to strong courts, providing the clearest Mexican case of the patronage-preservation logic at work.

6.2. Measuring Judicial Strength in Three Mexican States

Judicial strength is defined across three dimensions. First, *judicial spending* captures resource strength in both the size of and control over court budgets. Second, *institutional design* captures organizational arrangements that yield both independence and administrative capacity. Finally, *career structure* measures the extent to which the

hiring and permanence of judges reflects merit-based criteria rather than discretionary or arbitrary decisions. Change across these three dimensions can reveal the strengthening (progressive reform) or weakening (corrosive counter-reform) of courts. Thus, *change* and *reform* are often used interchangeably here, but reforms are also distinguished from counter-reforms.

Benchmarks facilitate the measurement of court strength and the identification of positive and negative change. As introduced above, these benchmarks or metrics are: (1) *judicial spending*; (2) *institutional design*; and (3) *career structure*. Importantly, these metrics capture palpable, real-world differences in the structure and operation of state courts, differences that are meaningful to ordinary citizens. It also bears emphasizing that the baseline condition in the Mexican states is PRI hegemony, a condition in which judicial institutions are weakened by patronage and corruption. Judicial strengthening entails movement away from this baseline.

First, *judicial spending* is a key source of court strength. In the U.S., “assaults on judicial independence” include punitive cuts in judicial budgets (Douglas and Hartley 2003, 448-452; see also COSCA 2003, 8). In newly democratic countries like Mexico, local court budgets are even more vulnerable. Historically weak and subordinate to the political branches, state judiciaries have struggled to gain both larger shares of the state coffers and greater autonomy over how the judicial budget is spent. Larger budgets translate into higher wages for judges and court staff, attracting competent professionals (Domingo, 723-25). However, even stable judicial budgets – neither growing nor shrinking – do not account for the corrosive effect of inflation, which reduces the real value of similar allocations over time (Domingo, 715). Beyond the size of court budgets,

financial autonomy also provides the judiciary with the discretion to prioritize capital improvements, provide performance incentives, and generally plan for the growth and management of the institution. Multiple interviewees identify the inability to plan appropriately as a critical weakness in the courts. In this regard, a recent report identified budgetary strength as a key issue facing Mexican courts (Caballero Juárez, López Ayllón, and Oñate Laborde 2006), and the Mexican Supreme Court identified court budgets as the Achilles heel of judicial independence (SCJN 2006). Thus, in the Mexican states, strong courts have large budgets, participate in the budgetary process, and transparent budgetary exercise yields a balance of autonomy and accountability.

Second, *institutional design* across the Mexican states is fairly uniform with one major exception – the presence and configuration of judicial councils. Judicial councils are administrative structures within the judiciary that, in their strongest form, take charge of all oversight, supervision, and disciplinary responsibilities (Fix-Zamudio and Fix-Fierro 1996). Independent administrative organs yield hiring, promotion, oversight, and disciplinary decisions that are more merit-based and credible. Traditionally, senior judges (*magistrados*) on the state supreme court (*Tribunal*) meet in private to discuss these issues, resulting in highly subjective and discretionary decisions. The tension and favoritism surrounding the professional futures of judges led one interviewee to refer to these meetings as “*corridos de toros*”, or bull fights (Interview 76). This practice generates incentives to maintain politically-charged loyalties with the *magistrados* in order to enter, remain, and ascend within the judiciary. Given that *magistrados* often owe their own positions to the governor, loyalty networks extend from entry-level positions all the way to the governor’s office. Judicial councils dismantle this loyalty-based

scaffolding, generating greater confidence and credibility both inside and outside the judiciary, and enhancing competence and administrative capacity.

A second benefit of judicial councils is that judges can focus on the task of judging. This offers clear improvements for the courts. Several *magistrados* in states without judicial councils report that administrative decisions take up the majority of time in the sessions of state supreme courts, and that administrative responsibilities impose significant burdens on judging. Thus, transferring these administrative duties to a judicial council yields substantial gains in the quality and efficiency of decisions.

Three critical issues arise in evaluating judicial councils across the Mexican states: structure, power, and composition. First, strong councils have permanent structures, with their own facilities, support staff, and full-time appointments. Second, strong councils have broad powers to review and decide administrative issues, including preparing and executing the court's budget, planning and development, as well as all hiring, promotion, termination, and disciplinary decisions. The strongest councils wield these administrative powers even over *magistrados*. Finally, strong councils have a mixed composition of representatives from the executive, legislative, and judicial branches, but maintain a judicial majority. There is considerable variation internationally and across the Mexican states in this regard (Fix-Zamudio and Fix-Fierro, n.p.), but generally the strongest designs are those that maximize accountability without compromising judicial independence. Council representatives from the political branches provide accountability, but if these representatives outnumber or overshadow those from the judiciary then separation-of-powers concerns can arise. Also, councils composed of democratic, peer-based elections are generally better than random selection processes that

might sacrifice competence for the sake of impartiality (Fix-Zamudio and Fix-Fierro, Epilogue).

Finally, *career structure* provides a third metric by which to evaluate court strength. While the judicial councils described above may control personnel decisions, the judicial career refers to the basic standards for becoming a judge and advancing through the profession. Strong judicial career structures in the Mexican states provide for competitive, exam-based hirings and promotions, establish reasonable term limits, and also constrain the discretionary influence of the governor in appointing *magistrados*, as well as the historical discretion of magistrados in appointing lower-level judges and court staff. One former councilor from Aguascalientes recalled that historically, *magistrados* had “total discretion” (*discrecionalidad absoluta*) to hire judges and other employees, and that this frequently meant judgeships went to “relatives, friends, and people who had done favors” for magistrados (*parientes, amigos, y bienhechores*) (Interview 53). As with the concerns regarding loyalty incentives, a strong career structure establishes mechanisms that remove these subjective incentives and replace them with reasonably objective and merit-based criteria.

Following the three dimensions of judicial strength outlined above, Table 3 reports court strength in Aguascalientes, Hidalgo, and Michoacán. Spending, design, and career considerations are noted separately. Taken together, these dimensions of court strength reveal courts are strongest in Michoacán, moderate in Aguascalientes, and weakest in Hidalgo. This ordering yields an ordinal measure (1-3) in the last row, where Michoacán = 3 (high), Aguascalientes = 2 (medium), and Hidalgo = 1 (low). A more detailed discussion of this ordering follows below.

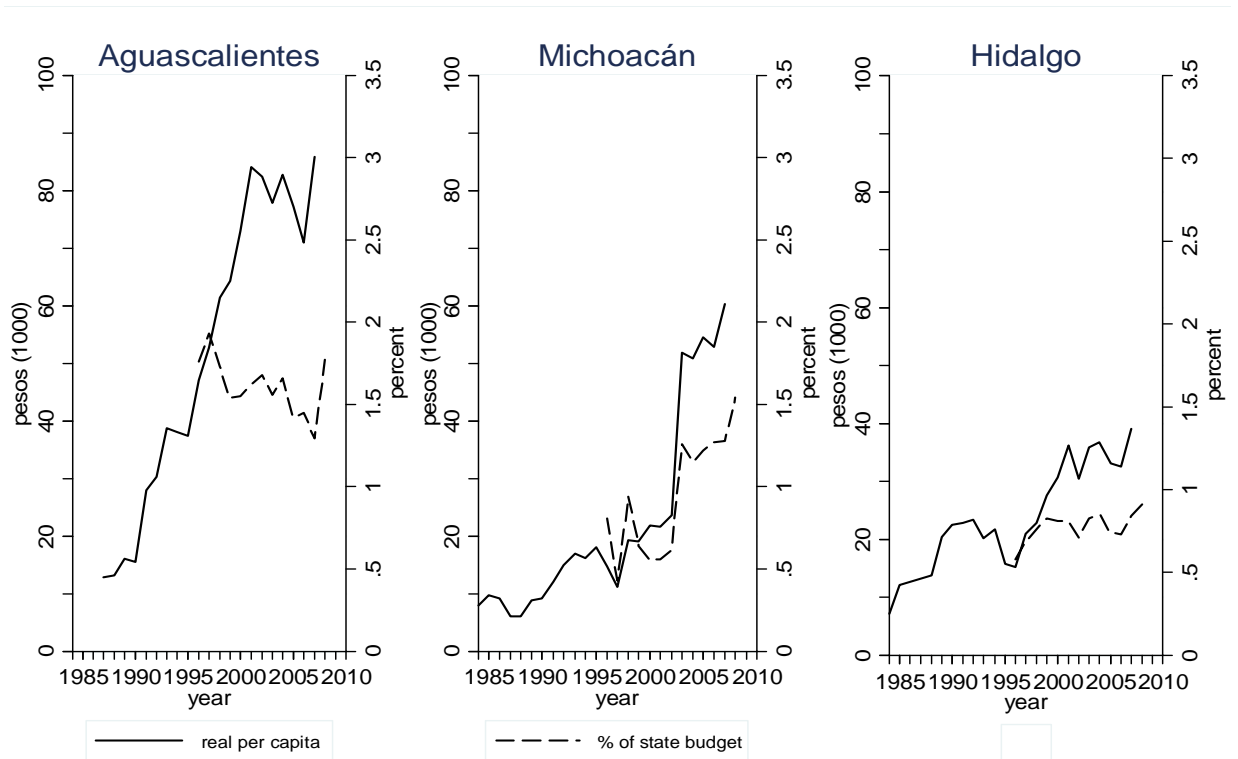
Table 6.1. Summary of Judicial Strength in Three Mexican States

	Aguascalientes	Michoacán	Hidalgo
<i>Judicial Spending</i>			
spending 2008	High	High	Low
spending (mean 1995-2008)	High	Med	Low
<i>Institutional Design</i>			
council reform	High	High	Low
counter-reforms	Yes	No	No
council structure	Low	High	High
council composition	Med	High	Low
council powers	Low	High	Low
<i>Career Structure</i>			
judicial career	High	High	Low
Overall	Med	High	Low

Judicial Spending

Figure 1 displays judicial spending across the three states from 1984 to 2008, both in real per capita terms and as a percentage of the total state budget.

Figure 6.1. Judicial Spending in Three Mexican States.¹¹⁵



Court budgets are highest in Aguascalientes, followed by Michoacán and Hidalgo.

In Aguascalientes, judicial spending increases dramatically since the mid-1990s, and the judicial percentage of the state budget has dropped below 1% only twice in the last 25

years, and since 1995 has oscillated between 1.93% in 1997 and 1.42% in 2005. Notably,

¹¹⁵ Figure 1 tracks spending per capita in real terms (solid line), referencing the Y-axis on the left, as well as spending as a per cent of the total state budget (dashed line), referencing the Y-axis on the right. Both metrics capture spending in a way that is comparable over time and across states. Sources include INEGI, state reporters (*Diario Oficial*), and annual reports. Deflators are from the International Financial Statistics Database of the International Monetary Fund (IMF 2007) using 2000 as the base year, and population figures are from INEGI.

while real per capita spending has been rising overall, the measure of judicial spending as a proportion of the total state budget has been dropping since 1997, rising again for the first time in 2008.

Court budgets in Michoacán are historically low, but a key change occurred in 2002-2003, when the court's budget more than doubled, increasing from \$104,949,274 pesos in 2002 to \$251,757,218 pesos in 2003. In 2003 judicial spending exceeded one per cent of the state budget for the first time. After 2003, the budget continued expanding, rising in 2008 to \$520,186,955 pesos and constituting more than 1.5% of the state budget. In both real and proportional terms, spending is quickly approaching the levels in Aguascalientes.

Hidalgo's court budget remains one of the lowest in all of Mexico, despite substantial increases in 2007 and 2008, and changing little over the previous 20 years. As a percentage of the total state budget, it should also be noted that judicial spending remained below 1% in Hidalgo for at least the last ten years. In sum, as of 2008, Aguascalientes had one of the highest judicial budgets in the country at \$153,824 pesos per capita, slightly higher than Michoacán's \$132,130, and twice the amount budgeted in Hidalgo of \$77,273.

The autonomy and accountability of judicial spending also varies across the three states. Aguascalientes has budgetary autonomy in that it can prepare and exercise its own budget, but conflict remains since the court president controls these functions with little transparency. This vertical arrangement generates ongoing accountability concerns (Interview 54), especially when monthly salaries stand at \$105,000 and \$141,000 pesos for *magistrados* and the president, respectively (considering the "aguinaldo", or thirteenth

month of salary each winter, these amounts convert to annual salaries of roughly \$136,000 and \$183,000 U.S. dollars, respectively, not counting annual bonuses for each of \$20,000 USD) (Presupuesto-Ags 2008). While high salaries are desired outcomes, these salaries begin to seem excessively high, suggesting a lack of accountability in the distribution of judicial resources (Interview 54).

In Michoacán, the judicial council has expansive powers to elaborate and supervise the execution of the court budget. This transparent control yields both autonomy and accountability. Salaries for *magistrados* are lower but still good, oscillating around \$90,000 pesos per month in 2008, or \$117,000 U.S. dollars annually (Duarte 2007; Rodriguez 2008).

Finally, Hidalgo's spending shows little autonomy or accountability. While the judicial council technically has the power to elaborate the court's budget, the court president manages this function and also supervises the budget's execution. This vertical arrangement generates autonomy, but dampens accountability, yielding similar concerns as in Aguascalientes. Symptomatically, detailed salary figures are not available in Hidalgo.

Institutional Design

In Aguascalientes, a key design improvement occurred in 1995 with a judicial reform that created a judicial council (CP-Ags, art. 53). However, the Aguascalientes reform generated a council that was weaker than the national council in both structure and composition. Despite giving the council strong powers, the reform created a non-permanent and part-time organ (members keep their separate, full-time jobs). The council meets only once or twice per month, and does not have its own offices. Moreover, the

council is composed of seven people, only three of whom represent the judiciary (the court president and two judges elected by their peers). The other four members represent the political branches – two from the executive and two from the legislature (CP-Ags, art. 54). Thus, the council is structurally weak and majority-political, unlike the majority-judicial councils in Hidalgo and Michoacán.¹¹⁶ Finally, a 2001 counter-reform removed most council powers, leaving the council in charge of only the judicial career (CP-Ags, art. 51).

In Michoacán, a 2006 reform created a judicial council (*Decreto 44*). The Michoacán council is very strong in its structure, powers, and composition, consisting of a permanent body operating full time and with its own installations. The council is composed of five members: (1) the president of the Tribunal; (2) a *magistrado* elected by her peers; (3) a first-instance judge elected by a peer-supervised election that requires the participation of judges; (4) a representative of the executive chosen by the governor; and (5) a representative of the legislature elected by vote in the *pleno* of the congress (CP-Mich, art. 67; LOPJ-Mich, art. 73). In addition to its permanent, full-time, majority-judicial, and democratic character,¹¹⁷ the Michoacán council has full administrative, supervisory, and disciplinary powers, including powers to approve and manage the judicial budget. The council holds administrative, supervisory, and disciplinary power

¹¹⁶ These structural factors impede the effectiveness of the council. While some interviewees note there is too little work in Aguascalientes for a full-time council (e.g., Interview 55), evidence suggests otherwise. For instance, the Aguascalientes judiciary manages a budget that, in raw terms, is equivalent to the budget in Hidalgo, at approximately 140 million pesos in 2007 and 180 million pesos for 2008 in both states. Also, both states have similar volumes of litigation, with totals of approximately 34,000 initiated cases in Aguascalientes and approximately 40,000 in Hidalgo for 2007 (PJ-Ags 2008; PJ-Hid 2008). A part-time and non-permanent council is severely handicapped to administer this workload.

¹¹⁷ The names of all judges are placed in a bag, and three names are drawn. These three form an election committee, which then supervises the council election. The committee generates a list of candidates – none of whom can be on the committee – and a statewide electronic vote decides who will represent the judges on the council. Furthermore, the election is only valid if at least two thirds of all judges participate (LOPJ-Mich, art. 75). Contrast this process with Hidalgo, where the *magistrados* pick the judge that will represent the first instance courts.

even over magistrados (LOPJ-Mich, arts. 10, 11, 13, and 77).

In Hidalgo, a 2006 reform created the judicial council (*Diario de Debates* 2006a). At first glance, Hidalgo's reform appears strong. The council is a permanent, full-time organ with its own offices, enjoys administrative, supervisory, and disciplinary powers over first-instance courts, and reflects a majority-judicial composition of five members: (1) the court president; (2) a *magistrado*; (3) a first-instance judge; (4) a representative of the executive; and (5) a representative of the legislature (CP-Hid, art. 100). Upon closer examination, however, the reform reveals several weaknesses. The council does not have any powers over *magistrados* or their staff (CP-Hid, art. 100; Interview 88). That is, *magistrados*, their clerks and other support staff are exempt from council supervision. Also, while the council has a judicial majority, the first-instance judge is selected at the discretion of the *pleno*, not by her first-instance peers as in both Aguascalientes and Michoacán. Thus, the majority reflects the interests of the high court, mainly its president.¹¹⁸

Career Structure

In Aguascalientes, the 1995 reform required that all sitting judges and *magistrados* take an exam in order to keep their jobs, and created a more objective, exam-based career. Also, many high positions in the offices of the executive, attorney general, local or federal legislature, and party leaders cannot become *magistrados* within a year of occupying those positions (CP-Ags, art. 53). The governor still influences the

¹¹⁸ Additionally, the constitutional and regulations of the judiciary leave ambiguities and lacunae that only favor the discretionary exercise of power. For instance, regarding the composition of the council, article 100 of the constitution only says the Tribunal "designates" the *magistrado* and first-instance judge on the council. Contrast this single word with the very detailed, transparent, and democratic electoral mechanism outlined in Michoacán, or the less detailed mechanism in Aguascalientes. Also, art. 100 Ter, sec. VI, provides language that suggests the *Tribunal* has the power to revise and revoke any decisions by the council.

selection of *magistrados* by reviewing candidates proposed by the council and recommending three to the legislature (CP-Ags, art. 54).

In Michoacán, the 2006 reform that created the council also dramatically altered the judicial career.¹¹⁹ In terms of the judicial career, *magistrados* and judges are not required to take an exam to keep their positions, as in Aguascalientes, but all future candidates for these positions have to take an exam and compete with a pool of candidates. The exams and evaluations are conducted by the judicial council, at the end of which the council presents a list of the three best candidates to the legislature for its vote (LOPJ-Mich, art. 9). Approval requires two-thirds of the legislative votes (CP-Mich, art. 79). Thus, the reform *removed the governor entirely* from judicial selection. Additionally, the reform restricted the entry of politicians to the state supreme court, noting that in the year prior to appointment *magistrados* could not occupy the post of Attorney General, state legislator, or Secretary in any of the departments of state government. Furthermore, the reform established term limits of 15 years subject to performance evaluations by the council every five years (CP-Mich, arts. 76, 77). Finally, unlike the other two states, *magistrados* and judges are forbidden from earning income in other capacities, including teaching and other academic positions (CP-Mich, art. 77). Similar competitive examinations and review periods apply to first-instance judges, law clerks (*secretarios*), and other court staff, including the support staff for *magistrados* (LOPJ-Mich, art. 108, 109). Judges are also subject to evaluation after three years. If successful, judges acquire life tenure (CP-Mich, arts. 87, and 90).

In Hidalgo, *magistrados* remain exclusively political appointments (CP-Hid, arts.

¹¹⁹ An earlier reform in 1999-2000 sought civil service exams, but was ineffective (Interview 70).

95, 96; Interviews 26 and 68). Far from requiring sitting judges and *magistrados* to take an exam in order to keep their positions, Hidalgo does not even require new *magistrados* to submit to an exam or an evaluation by the council before reaching the state's highest court, as in both Aguascalientes and Michoacán. The governor still controls the judicial selection process, sending the names of preferred candidates to the legislature for approval. Given the elite-controlled context, the PRI's dominance and discipline, and the powerful role of the governor, the ratification is a mere formality (Interview 66). Thus, the *Tribunal* remains a highly politicized body, often occupied not by judicial specialists but by political favorites, indicating continuity not only in the PRI's electoral dominance but also in institutional arrangements of a bygone era. Other glaring signs of this continuity are the presence of clear conflicts of interest and nepotism on the state's highest court; with regards to the complaints of nepotism, two senior judges justified the presence of relatives on the court as "normal" and unproblematic (Interviews 78 and 79).¹²⁰ Moreover, where the state constitution appears to break this continuity by precluding anyone from becoming *magistrado* if they occupied an elected political office in the previous six years, a later subsection specifically exempts *magistrados* of the state's highest court from this prohibition (CP-Hid, art. 95, secs. VII, VIII, IX). Thus, there is no barrier to the entry of recent politicians to the state supreme court, as in both Aguascalientes and Michoacán.

¹²⁰ In a particularly glaring impropriety, there is at least one set of Pfeiffer cousins on the court as of April 2008. Interview evidence also indicates Alejandro Austria Escamilla, a new member of the court as of January 2008, is President Viggiano Austria's cousin (Interviews 56, 59, 66, 69, and 78). Though there are qualitative differences between (i) the authoritarianism of traditional elites described here and (ii) the authoritarianism of military regimes, the characterization by local elites of clear conflicts of interest and even nepotism as "normal" resonates with the elite acceptance of the military's prominent role in politics as "normal" in Turkey (Shambayati 2008, 289).

6.3. Causal Analysis

Table 4 summarizes causation in the three states. The top row lists the states and the first column lists causal logics, followed by a summary of causation in each state.

Table 6.2. Summary of Causal Analysis in Mexico

	Aguascalientes	Michoacán	Hidalgo
re-election logic	No	No	No
signaling logic	No	No	No
insurance logics			
1 – profit maximizing	No	No	No
2 – self-protection	No	No	No
3 – policy-preserving	No	No	No
opportunity logic	No	No	No
veto-player logic	Yes	Yes	No
ideology	Yes	Yes	No
	Neoliberal, “market-oriented” governor (belonging to PRI) motivates reform; conservative judicial elites and traditional, PAN-aligned administration combine to produce counter-reforms between 2000-2001	Progressive, “democracy oriented” PRD motivates reform, assisted by ideologically sympathetic judges; traditionalist PRI and conservative judicial elites combine to block reform’s progress for 3 years	
Summary	Early strong and fast change driven by reformist PRI governor, later weakened by counter-reforms driven by PAN and traditional judges	Initial strong reform driven by PRD, but blocked by PRI for 3 years; pro-reform judicial lobbying and weakening of PRI allow reform, but PRI-PRD negotiation still dilutes original PRD project	Late, fast, and shallow reform shaped by non-competitive, non-ideological politics and elite entrenchment

The re-election logic receives no support. None of the states provide evidence that reform, even moderate reform, responded to incentives to generate the “best policy” for the sake of electoral success. Rather, the Aguascalientes changes in 1995 were motivated by an economically liberal, reformist PRI governor who began governing during the run-

up and approval of the North American Free Trade Agreement (NAFTA), twice attended the World Economic Forum, was especially sensitive to the “economic competitiveness” gains from strong courts, and sought to strengthen local courts as part of a broader, market-oriented development project (Interview 13). Moreover, the counter-reforms in Aguascalientes cut against the re-election logic. If all politicians have this incentive, why did the PAN-aligned government approve the counter-reforms? Also, in the strongest case of reform – Michoacán – the project began quietly at the start of the PRD’s first administration, not as a means to attract votes, and was motivated primarily by the PRD’s programmatic effort to restructure the judiciary. Given the lack of competition in Hidalgo, we would not expect to see this logic, but a weak reform occurs anyway.

The insurance logic is also unsupported. The Aguascalientes reform was carried out by a PRI administration that anticipated staying in power, and the Michoacán reform was initiated at the optimistic start of the PRD’s six-year administration. While some observers might note that the PRI eventually lost in Aguascalientes in 1998, two points are worth highlighting. First, Governor Otto Granados Roldán began the reform in 1994, preparing and then establishing a Reform Commission on October 6 of that year, four years before the next elections. Second, local observers agree that nobody anticipated the PRI’s loss in 1998. In fact, the loss of a legislative majority in late 1995 came as a surprise (Baca Morales; Interview 35). Thus, a self-protection insurance logic would receive support if the reform occurred after the legislative elections of 1995 alerted the PRI that their electoral strength was eroding, but this logic is not supported before 1995, which is when Granados Roldán begins the reform. Even in Hidalgo – where the PRI leadership would have every reason to seek “insurance” after witnessing the national

decline of the PRI for over a decade – the 2006 reform came 12 years after the national reform and was so weak and superficial that it could not possibly protect the PRI if it were forced from office. Indeed, the ongoing politicization of the judiciary in Hidalgo effectively leaves courts more vulnerable to manipulation if an opposition party were to win.

Similarly, there is no evidence for the signaling logic. Where this logic anticipates a “credible commitment” from majorities that face competition but expect to stay in power, the Aguascalientes reform did not have a minority audience since the PRI dominated both political branches in 1994. In Michoacán, the incoming PRD administration initiated a strong reform process in 2002 that was blocked by the PRI opposition, and the PRI political minority maintained its resistance for three years. Neither state is a signaling story, and in non-competitive Hidalgo we would not expect to see this logic. Thus, the conventional re-election, signaling, and insurance logics do not satisfactorily explain reform in these three Mexican states.

The opportunity logic is supported by the increased mobilization of progressive judges in the reform process in Michoacán. Notably, these judges had an ideological affinity with the PRD. Thus, as the PRI’s electoral strength waned and the PRD’s strength grew, i.e., as the competitiveness of local elections increased and led to the rise of the PRD, reformist judges saw political openings for their initiatives that they had not seen before.

Indeed, external and internal ideological commitments, combined with the opportunity and veto player logics, explain most of the observed variation. Additionally, a “patronage-preserving” logic also explains the continuity and persistence of weak

courts in Hidalgo. This logic is a close relative of the entrenchment logic articulated by Hirschl and Gillman, but is distinct in that it is (a) non-ideological and (b) does not result in any real strengthening of the courts.

6.3.1. Courts in Rightward, PRI-to-PAN Transitions

Starting with Aguascalientes, the principal judicial changes were the 1995 reform and the subsequent counter-reforms in 2000 and 2001. In 1994-1995, the PRI occupied the state executive office and dominated the legislature, and PRI governor Granados Roldán (1992-1998) was the main engine of reform. Granados, a technocratic *priísta* allied closely with the Salinas administration, did not have ties to local elites and made early enemies in Aguascalientes (Interviews 13 and 35). As the 1992 state elections approached, Salinas designated Granados as the official PRI candidate for governor over Hector Hugo Olivares Ventura, son of Enrique Olivares, leader of a prominent political family in the state. Thus, Granados began his term as an outsider to Aguascalientes politics, a candidate for governor imposed by the central government over the preferences of local political families. He was strongly disliked by these local political elites, and the situation only worsened as the unpopular Salinas administration came to a close in the midst of a turbulent 1994 (Baca Morales 2006).

Despite this politically difficult situation, Granados initiated a reform project by installing a Judicial Reform Commission on October 6, 1994.¹²¹ Interview evidence shows Granados did not initially contemplate judicial reforms as part of his program of government. However, after attending two meetings of the World Economic Forum he

¹²¹ Romo Saucedo (1997) locates the first meetings of the Reform Commission in September of 1994 (9, 113), but the official court history (Márquez Algara 1999) identifies the start date of October 6, 1994. I use the later, more specific date, in part because it shortens the distance between the official start of the Aguascalientes reform and the official start of the federal reform, thus reducing the bias of finding no relationship between the federal and state reforms. In any case, the time difference is not great.

increasingly sought a well-functioning judiciary as part of a broader, market-oriented economic development plan. Indeed, by the summer of 1994, he was explicitly framing the judicial reform in terms of the benefits stronger courts could provide for “economic competitiveness” (Granados Roldán interview; see epigraph). Stated otherwise, despite being formally identified with the PRI, Granados Roldán’s ideological views aligned more closely with the neoliberal wing of the rightist PAN. In fact, as a technocratic outsider to Aguascalientes politics, indicated for the governorship by the technocratic Salinas administration, Granados Roldán was likely more disposed to adopting these neoliberal views than a traditional, local PRI politician. Consequently, at least two of the eleven Commissioners on the governor’s Reform Commission represented business associations and chambers of commerce – including the local representative of a national industrial organization, the National Chamber of Manufacturing Industry (*Cámara Nacional de la Industria de Transformación*, or CANACINTRA) – and Business Coordination Center (*Centro Coordinador Empresarial*) (Romo Saucedo 1997, 10; Márquez Algara 1999; Interview 13). This Reform Commission began meeting in October of 1994, two months before Zedillo’s national reform project was unveiled in December. On March 27, 1995, the legislature approved the reform, creating the judicial council and the other changes mentioned above (Interview 13; Márquez Algara).

The spending increase in Aguascalientes is also due to the creation of the judicial council.¹²² The reform delegated to the council the power to elaborate the budget with a greater degree of autonomy from the executive (Reglamento-Ags 1995, art. 19), thereby driving spending upwards. However, the court president still retained total control over the *execution* of spending. Thus, while the 1995 reform exerted an upward pressure on

¹²² Salary increases account for the rise in spending in 1990-1991 (Interview 5).

spending, the real spending power remained vertically concentrated in the judicial leadership, decreasing transparency and accountability (Interview 55).

Two months after Granados created the Reform Commission, at the very beginning of Zedillo's presidency in the first week of December 1994, Zedillo announced a national reform project, including the creation of a judicial council. The national reform proceeded quickly and was approved by December 31, 1994 (Fix-Fierro 2003). Due to the proximity of Zedillo's reform, the Aguascalientes reform is conventionally understood as an example of centrifugal policy diffusion in which Granados merely copied Zedillo's national reform (e.g., Interview 35; Beer 2006). Evidence supporting this argument includes the political vulnerability of Granados in 1994 vis-à-vis local political families. By mimicking the national reform, Granados could ingratiate himself with Zedillo, strengthening his position locally.

However, Granados was already considering a reform project and had a working Commission two months before Zedillo's reform. Granados merely adopted the figure of the judicial council from Zedillo's project (Interview 13). Although the Aguascalientes council is structurally weak, the reform nonetheless transferred administrative powers to the council. More importantly at the time, the reform required all sitting judges and *magistrados* to submit to an exam to stay on the job, a requirement that was not part of the federal reform. Zedillo terminated all sitting justices on the national supreme court, replacing them with his own selections (Fix-Fierro 2003; Finkel 2008).

In Aguascalientes, judicial elders resisted the transfer of power and examination requirement promoted by the governor (Interview 5).¹²³ Importantly, by insisting on the

¹²³ One interviewee recalls the governor gathered all judges and *magistrados* in the early weeks of 1995 to explain the reform. Attendees were outraged, particularly by the exam requirement. A senior judge recalled

exam requirement not just for lower judges but also for *magistrados*, as well as an exam for future candidates for *magistrado*, Granados Roldán was submitting his own judicial appointments to the exam, as well as reducing his own discretionary power, and that of future executives, to select judges to the state's highest court. This self-restriction, along with his willingness to confront judicial elders, is further evidence that Granados did not simply follow Zedillo's lead, but that he was motivated by a programmatic commitment to reform.¹²⁴ Notably, Granados enjoyed an overwhelming supermajority (80%) in the local legislature, generating a strong, aligned, single-veto player environment in which to pass the reform. This electoral landscape made the passage of the reform very easy (Interview 13).

The second analytic moment in Aguascalientes began in 2000. Following the PAN's first statewide victory in 1998, a PAN-aligned government emerged in 1999, occupying the executive and 62% of legislative seats. Though the PRI-to-PAN alternation could be interpreted as an indicator of increasing competition, the PAN-aligned government actually punctuates a transition from PRI dominance to PAN dominance. In this single-veto-player context, it would have been relatively easy for the PAN to promote further judicial change. However, contrary to theoretical expectations, the PAN did not promote positive change or deepen the Granados project. Rather, the PAN sought to subordinate the judiciary, and even facilitated the reversal of some of the gains made since 1994.

that Granados noted that by taking and passing the exam, judges had a chance to legitimate their position, enhancing their image in society (Interview 5).

¹²⁴ Indeed, these motives also find support in the results of the exam. One *magistrado* and a first-instance judge refused to take the exam and retired, and another *magistrado* and two judges did not pass and were forced to leave, including a judge who was the brother of the sitting court president and a *magistrado* that Granados himself had nominated two years earlier (Interviews 5, 13, and 55; Márquez Algara 1999). Thus, the exam effectively restricted the sitting governor's own influence over the judiciary and also "cleansed" the judiciary of perceived favoritism and nepotism.

In fact, the PRI-to-PAN alternation in 1999 generated two corrosive influences – anti-reform elements within the PAN and an emboldened, conservative judicial leadership. The new PAN administration of governor Felipe Gonzales proposed a budgetary law, approved on September 25, 2000 as the “Ley Patrimonial del Estado de Aguascalientes,” seeking to give the legislature expansive powers over, among other things, the execution of judicial spending and purchases, essentially controlling the court’s budget, reducing the financial and administrative autonomy of the judiciary.¹²⁵ Second, resistance to the 1995 reform continued among judicial elders, reflecting a struggle over resources and status. Emboldened by the departure of Granados and led by court president Cleto Humberto Neri, *magistrados* promoted the reversal of the 1995 reform, lobbying for and obtaining a counter-reform from the PAN-aligned government on October 26, 2001 (Interviews 5 and 14). This counter-reform removed most of the council’s powers, including budgetary powers, returning them to the *Tribunal*, which was presided over by Neri himself.¹²⁶ Even today, most *magistrados* prefer a limited council without any administrative and disciplinary powers, especially not over *magistrados* (Interviews 5, 15, and 57).

The PAN’s maneuvering, along with Neri’s lobbying and the 2001 counter-reform, support the theoretical framework integrating the veto player logic and ideology, in that judicial change can occur in noncompetitive, single-veto-player environments, and in the emphasis on ideology (external and internal) over competition. Traditional

¹²⁵ Cleto Humberto Neri, then court president, challenged the law’s constitutionality in the Mexican Supreme Court, winning a 9-0 decision in 2004 (C.C. 35/2000; T.J. 82/2004).

¹²⁶ Since 2001, the council is only in charge of supervising the judicial career (CP-Ags, art. 51). Judicial elders maintain complete control over financial resources. Indeed, the court president and *magistrados* personally lobby legislative committees and individual legislators for budgetary increases during the fall budget season, even leading tours of court facilities (Interviews 57 and 61). *Magistrados* credit this lobbying for the budget increases in 2007 and 2008.

politicians and judicial elders played a key role reversing the 1995 changes. Importantly, Neri and his colleagues could not have succeeded without the help of the political branches, which had to approve any counter-reforms. In this regard, the success of the 2001 counter-reform in the PAN-aligned environment supports the claim that the PAN in Aguascalientes has no programmatic commitment to strengthen the judiciary. In fact, the counter-reform and the earlier attempt to control the court's spending noted above constitute evidence of just the opposite – a negative relationship between the local PAN and court strength. Also, the court's weakening under the first PAN administration led by Gonzales resonates with interview evidence regarding the hostility of Gonzales to strong institutions (Interview 35). In short, if ever there was an easy opportunity for the PAN to strengthen courts, it was during the unified, PAN-aligned government of 1999-2001. However, the PAN did not strengthen the court. Rather, the PAN weakened the court, providing compelling evidence that the right in Aguascalientes is not committed to strong courts. Moreover, the PAN victory, with Gonzalez at the helm, created opportunities for old-guard judicial activism, rallying “beyond the bench” to recapture their institution.

Finally, beginning in 2005, the PRI started sponsoring legislative initiatives for a *re-reform*, seeking to return all administrative, supervisory, and disciplinary powers to the council, as originally approved in 1995. As of April 2008, these initiatives remained in committee (*Iniciativa 2005; Iniciativa 2007*). Notably, while the PAN retained control of the executive branch during this period, legislative composition shifted from a PRI plurality (2003-2005), a PAN supermajority (2006-2008), and a PRI majority as of 2008 (CIDAC). In the two recent instances of multi-veto-player environments (2003-2005 and 2008-present), current and former legislators note the PAN blocked the PRI's new

reforms, and judicial elders continue to resist a strong council (e.g., Interview 13; 24). The PAN and traditional judicial elders again “vetoed” positive judicial change. Thus, competition did not yield reform, and the ideology of politicians and judges continues to be the determining factor.

6.3.2. Courts in Leftward, PRI-to-PRD Transitions

In Michoacán, the integrated framework also explains the reform. The first PRD administration (2002-2008) under Lázaro Cárdenas Batel promoted judicial reforms alongside the dramatic budgetary increases in 2002-2003. These reforms include a judicial council and changes to the judicial career. During a period of divided government (PRD governor and PRI-dominated legislature), the PRI opposition blocked the reform, so the process stalled for the full three years in which the PRI-majority remained in the legislature. The reform reappeared in May 2005 after mid-term elections weakened the PRI, making the PRD the largest party in the congress. Notably, no single party controlled a legislative majority, so the PRD needed the support of the PRI in order to approve the reform. Ultimately, the reform succeeded after a lobbying battle between pro- and anti-reform judicial elders, though the approved reform had been diluted by the negotiations between the PRD and PRI (Interview 70). Thus, programmatic commitments motivated the initial reform effort, the PRI and conservative, traditionalist judges “vetoed” the reform in the newly competitive context, and the reform succeeded only when the elections broke up the power of the PRI. Critically, the PRD’s lack of a legislative majority meant the PRI could have maintained its veto, but in the broader policy space generated by pluralism and competition, judges played a key role in shaping a debate that defused the PRI’s potential veto and enabled negotiations to proceed.

Ultimately, four years after the first project was drafted in 2002, the reform passed by a unanimous vote (*Decreto 44*).

The reform was driven primarily by the PRD and sympathetic *magistrados* and judges. Interview evidence credits the incoming PRD governor, Cárdenas Batel, with a reform initiative. This initiative eventually charged Alejandro González Gomez, current *magistrado*, and Jaime Del Rio, current electoral judge, with drafting the first council project. A first draft of the reform written by Del Rio in late 2002 suggests budgetary increases for 2003 and details the judicial council project (Reform Draft 2002). Both González Gomez and Del Rio formed part of a close group of legal advisors to the incoming governor, working on the council project even before Cárdenas Batel took office (Interview 70). One interview called González Gomez the “tip of the spear” of judicial reform in Michoacán (Interview 43; “*la punta de la lanza*”), and another referred to him as the main motivator of reform (Interview 76). However, it is Jaime Del Rio who drafted the first council reform (Interview 38).¹²⁷

Notably, both González Gómez and Del Rio had deep roots in the progressive wing of the PRI in the state dating back to the administration of General and later President Lázaro Cárdenas Del Rio after the Revolution, a progressive wing that eventually formed the PRD. Indeed, the father of González Gómez had been court president under Cuahtemoc Cárdenas. Also, both men had pursued doctoral studies in law in Spain, where they were profoundly influenced by the progressive legal currents of the anti-Franco, democratizing judges’ movement under the banner of “Democratic Justice” (*Justicia Democrática*), now Judges for Democracy (*Jueces para la Democracia*)

¹²⁷ Both González Gomez and Del Rio studied law at the doctoral level in Spain. González Gomez earned his doctorate and worked for the judicial council in the federal district, while Del Rio focused his doctoral studies on the history and operation of judicial councils.

(Interview 38; see Hilbink 2007b; 2009). While in Spain, the progressive principles and commitments of the two men developed in tandem with their existing friendship and familial connections. Thus, judicial reform was integral to Cárdenas Batel's project for 2002-2008, and he gathered a group of loyal, progressive legal minds to help carry out the reform.

In this regard, interviews note Cardenas Batel's personal commitment to a strong judiciary as part of his vision of democracy (Interviews 38, 70, 76, and 82). Specifically, interviews emphasize that Cárdenas Batel's commitment to strengthen the judiciary was qualitatively different from his predecessors and that he followed through with campaign promises to strengthen courts. Cárdenas Batel promoted the financial strengthening of the judiciary, along with a vision of "democratizing" the judicial branch (Interview 38), renovating or "oxygenating" a portion of the state supreme court with new, progressive judges, and creating the judicial council (Interviews 12 and 70). In fact, his support for the judicial strengthening project, in both budgetary matters and in the council reform, continued despite the fact that the reform would remove his influence in the judicial selection process (Interview 70). Specifically, the reform Cárdenas Batel was pursuing would limit his ability to influence the selection of judges, even to the states highest court. As was the case with Granados Roldán in Aguascalientes, Cárdenas Batel was willing to constrain his own power in ways that were historically highly unusual among Mexican governors. Indeed, this first PRD administration in Michoacán began a historic phase of judicial strengthening. In terms of judicial spending alone, one six-year, PRD administration achieved what it took PRI and PAN administrations 10-12 years to achieve in Aguascalientes, and what had still not been achieved in PRI-dominated

Hidalgo through 2008. Also, the PRD engaged in a sustained reform effort for three years against PRI-based opposition.

From the start, Cárdenas Batel's council project faced opposition from traditional, conservative judges and from the PRI in the state's 69th legislature (2002-2005). First, opposition from within the judiciary came mainly from judges sympathetic to the PRI, but it also came from some judges who, while sympathetic to the PRD, nevertheless sought to protect their own interests. Both types of judges prioritized the security of their jobs under the old order above the objective strengthening of the judiciary. That is, the reform would require a new openness, transparency, and objective standards for hiring, promotion, and discipline – even termination – and traditionalist judges preferred the job security and even power that came with the opacity of the old order rather than the risk that would accompany disrupting the status quo. These tensions were real and powerful, and ultimately caused the original reform project to be diluted by competing interests.

Outside the judiciary, the main opposition to the reform came from the PRI legislators. The PRD held only 23% of legislative seats, while the PRI held 57%. Thus, the PRI acted as a classic veto player, blocking the reform. However, in the 70th legislature (2005-2008), the PRD's share of seats rose to 43% and the PRI's dropped to 38%. According to interview evidence, the PRI in 2005 realized it could not block the reform any longer, but it could play a role in shaping it by negotiating and bargaining votes with the PRD. Thus, the PRI proposed its own reform as a negotiation tactic, including an "Administrative Commission" that was essentially a very weak version of a judicial council, remaining subordinated to the Tribunal (*Decreto* 44, 8). The original project drafted by Del Rio called for a council composed only of members of the

judiciary, i.e., no politicians, explicitly citing the perceived impropriety, at present, of submitting the judiciary to political control or influence (Reform Draft, 26). It should be noted that the PRD was behind this original proposal *despite the fact it had just won the governor's office and was electorally ascendant*. However, the PRI's opposition subjected the council reform to negotiation, and the final reform resulted in a mixed council with a representative of the legislature who was ideological affiliated with the PRI.

A principal source of resistance to the PRD's council project came from the highest levels within the judiciary itself – from seven of fifteen *magistrados* (Interview 12). These seven *magistrados* were closely identified with traditional power relations within the judiciary, and with the local PRI (Interview 38), so the anti-reform judges were working in tandem with PRI legislators to propose the weak “Administrative Commission” cited above and to block the PRD's project. Some of this resistance was linked to organizational culture and differences over the proper separation of powers, but the reform would also require accountability for the quantity and quality of judges' work for the first time in Michoacán's history. Until November 2007, not a single court of the Tribunal had ever been reviewed for work quality (Interview 12).

Furthermore, an outside organ like the council threatened to disrupt longstanding clientelist networks within the judiciary. With the arrival of the council, transparency and competence would become guiding concepts in everything from hiring to firing. Thus, where *magistrados* could previously wield substantial power and influence over lower-court judges and employees, holding as they did the power to make or break judicial careers, this power would now transfer to a more neutral and transparent organ. It is not

surprising, then, that three of the *magistrados* resigned shortly after the judicial council began operating in May 2007. The 2008 Annual Report notes the voluntary retirements of Ricardo Color Romero, Ramón Nuñez Álvarez, and Isidro Romero Silva. Interview evidence suggests that these judges were strongly opposed to the judicial council and that the retirements were motivated in part by reluctance to have their work “checked” by an outside organ. Indeed, one of these judicial elders left only days before his chambers were audited (Interview 38). This interview evidence finds support in a document drafted in opposition to the judicial council and submitted to the legislature. The document is signed by several judges, including these three (*Oficio* 2006).

Given the deep divisions among *magistrados* and the evolving struggle for reform between the PRD and PRI, judicial lobbying emerged as a critical mechanism of change. In Michoacán’s newly competitive environment, increased electoral competition raised the number of veto players but also opened a policy space, i.e., a political opportunity, for judges to mobilize, providing anti-reform judges with a PRI audience and pro-reform judges with a PRD audience. Pro-reform judges allied with the PRD governor and legislative minority were ideologically motivated to refashion the judiciary, and traditional, anti-reform judges allied with the PRI legislative majority had an incentive to lobby in order to protect their organizational fiefdoms. The state Supreme Court was split down the middle, and this intra-judicial tension remained high even after the PRI’s legislative presence weakened in 2005. In a fairly evenly split legislature, with the PRD holding a plurality (43%), judicial lobbying shaped the final reform project. Led by court president Mauro Hernandez Pacheco, a well-respected local figure, the pro-reform judges successfully lobbied PRI legislators, convincing them that the reform would pass sooner

or later. Hernández Pacheco had been a judicial employee for over 30 years, entering the judiciary in the late 1960s at the lowest level (*escribiente*) while still studying law at the university, and rising to the post of magistrado in 1980 and later court president (*magistrado presidente*).¹²⁸ His professional trajectory endowed his formal position as president with the kind of legitimacy and credibility that enhanced his leadership capacity. The PRD's reform with the strong judicial council was eventually approved, but having passed through the filter of the PRI it did not emerge unscathed. The PRD accepted some compromises, but obtained a strong council nonetheless (Interview 28; *Decreto 44*, 199-200).

As suggested by Tsebelis (2002), competition hindered the reform process by increasing the number of veto players, and ideology was the determining factor. Notably, progressive, pro-reform judges lobbied anti-reform politicians, altering the preferences of the latter. PRD politicians and PRD-sympathetic judges combined to overcome the resistance of PRI politicians and traditional judicial elders, producing a strong reform.

However, as also indicated above, competition generated political openings for judicial mobilization. Specifically, while conservative, anti-reform judges mobilized alongside the PRI against the reform, progressive, reformist, PRD-sympathetic judges mobilized alongside the PRD. The latter group was the more influential, leveraging the support of the Cárdenas Batel administration over the course of several years (2002-

¹²⁸ The career of Hernández Pacheco, along with that of Fernando Arreola – court president in 2008 – was interrupted in 1996 when then incoming governor Victor Manuel Tinoco Rubí (PRI) removed Hernández Pacheco and Arreola from the court. Under the law, judges on the state's highest court (*magistrados*) acquired life tenure, but there was a gap in the law (“laguna de ley”; Interview 82) that left it unclear whether life tenure triggered after seven (7) or ten (10) years on the court. In what was the first legal challenge to the removal of a magistrado by a governor – a case that became known as the “amparo Arreola” – both judges challenged their removal and won their reinstatement at the national Supreme Court. Notably, Pacheco had already been a magistrado for 16 years (1980-1996). He returns as magistrado in 1998, and becomes court president in 2002. He was subsequently re-elected for three more terms, through 2006.

2006) to bring about the reform.

This group of progressive judges – with the previously mentioned González Gómez and Del Rio at its core – organized and drafted a reform agenda in ways that drew on academic roots and influences dating back to their common legal training in Spain. Notably, both González Gómez and Del Rio carried out doctoral studies in law in Spain, at Madrid’s Universidad Complutense. These two future judicial leaders were also joined in legal studies in Spain by Juan Antonio Magaña de la Mora and Emanuel Roa. Magaña de la Mora would become *magistrado* during the PRD’s administration, and Roa became director of the Judicial Institute (*Instituto de la Judicatura*), which was in charge of all training and continuing professional education of judges and court staff. Both Magaña de la Mora and Roa contributed to the early definition of the reform agenda (Interview 33; 38; 43; 70; 75; 86).

Jaime Del Rio, as stated earlier, wrote the first drafts of the reform (Reform Draft 2002). It should be noted that Del Rio’s doctoral studies in Spain focused on the design and function of the national judicial council in Spain, an institution with a controversial history (see Hilbink 2007b). Drawing on lessons from the Spanish experience, Del Rio was seeking a constellation of “best practices”, and was uniquely equipped to draft such a reform in Michoacán.

Moreover, the progressive credentials of the reform were compelling. Aside from deep ideological sympathies and affinities with the local currents of the PRD, coursing through the Cárdenas Del Rio, Cárdenas Solórzano, and Cárdenas Batel families, the intellectual lineage of the Spanish-trained judges drew on strong democratizing tendencies in legal and constitutional studies, including the “democratic justice” currents

from the post-Franco era in Spain and other scholars of democratic practice and the rule of law. Most notably, Enrique Gimbernat (a prominent Spanish scholar of criminal law) and Alvaro Bunster Briceño (an equally prominent Chilean scholar of criminal law who had been ambassador to the UK under Salvador Allende and later taught in Spain) shaped the intellectual formation of the Michoacán group pursuing graduate studies in Spain. González Gómez notes these influences explicitly, along with those of the constellation of judicial figures in Spain's transition to democracy that might be reasonably grouped under "judges for democracy" – including one of their leading figures, Andrés Ibáñez¹²⁹ (see also Hilbink 2007b). Indeed, the writings of González Gómez reflect these influences, especially in the area of criminal law, where he emphasizes the Spanish conceptualization of the "social and democratic rule of law" (*estado social y democrático de derecho*) and the need to reinterpret the Mexican Constitution of 1917 in light of these social and democratic perspectives on the role of the law and courts (González Gómez 2007, 50-56).

These academic and intellectual networks highlight the important role of ideas and ideology, but also identify mechanisms or "technologies" by which these ideas travel across national boundaries. Indeed, the ideational features of the group of judges that studied in Spain and the manner in which their intellectual trajectory was formed by legal communities residing and moving across international boundaries resonates with work on epistemic communities in international relations and legal studies (e.g., Couso and Hilbink 2009).

In sum, judicial change in Michoacán was shaped by electoral competition and ideology. Electoral competition exerted its influence in the form of the opportunity logic

¹²⁹ Personal communication with the author.

and the veto player logic, generating positive and negative forces, i.e., competing pressure, on the judiciary. Importantly, ideology and ideational factors appear to have mattered the most. First, the progressive coalition of PRD politicians and sympathetic judges maintained a reformist initiative for several years, despite electoral obstacles. Moreover, judges and politicians were able to sway politicians in a reformist direction even when, *ex ante*, the PRD did not have the legislative supermajority to carry out the constitutional reform. Finally, these ideas and ideational frames that shaped the reform project traveled across international boundaries, via teacher-student relationships and academic colleagues, until they took shape, in practice, in Michoacán.

6.3.3. Courts in PRI-Dominated, Authoritarian Enclaves

In Hidalgo, judicial change has come late and in diminished form. Indeed, even the much-publicized 2006 reform that interviews identify as the key judicial moment in the last 20-25 years reveals shallow changes and continuity in some of the most striking areas, including politically-controlled selection to the state's highest court. Despite the lack of substantive change in Hidalgo, the process deserves attention in order to better understand the obstacles to change in non-competitive, non-ideological environments. The timing and sequence of events in the reform process exposes some of these obstacles.

After announcing a judicial reform project on March 21, 2006, PRI governor Miguel Angel Osorio Chong presented a legislative initiative two weeks later, proposing the formation of a judicial council (Peralta 2006a). Prior to March 21, there was no indication the governor planned to form a council. The council project did not appear among other planned reforms in the chapter on courts and justice in the State Development Plan for 2005-2011 (Gobierno de Hidalgo 2005), and interview evidence

indicates the project was not part of Osorio's campaign or first year in office (Interviews 16 and 66). Scarcely five months later, however, the law was approved and the council formally established on August 15, 2006 (Poder Judicial de Hidalgo 2006a).

The trajectory of the current court president, Alma Carolina Viggiano Austria, helps understand the surprising arrival of the council in Hidalgo. Recognized by many as a good administrator (Interviews 26 and 68; Veledíaz 2007), Viggiano was a consummate politician, and interview and journalistic accounts place her squarely within the dominant local elites (Interview 90; Veledíaz 2007). Viggiano was a state and federal legislator for the PRI, a cabinet member for both the current and previous state governments, and campaign coordinator for the current governor, Osorio, as well as local campaign coordinator in 2005-2006 for the PRI's presidential candidate, Roberto Madrazo (Interviews 66, 78, and 90; Viggiano 2008). After Madrazo's failed run at the presidency, Viggiano was "on leave" in mid-2006 (Interview 78).

Several interviews note that Osorio agreed to create the council for Viggiano as a stepping stone to the state supreme court (Interviews 3, 66, and 69). Viggiano could restart her public life, but Osorio also had his own incentives. He needed to reward Viggiano for managing his successful campaign for governor, and he wanted to replace the court president at the time, Francisco Díaz Arriaga, who was involved in a very public corruption scandal that was generating criticism for Osorio's administration (Interviews 3, 66, and 69; Veledíaz 2007). The events of 2006 unfolded in a manner that supports the above account. First, with no previous statement on judicial councils, and with strong historical opposition to councils among judicial elites in the state (Interview 78), Osorio promoted a constitutional reform in March to create the council. Second, as

noted above, the reform was approved quickly, unanimously, and without much discussion by June 8 (*Diario de Debates* 2006a). Three weeks later, the state legislature voted unanimously to select Viggiano as its representative to the council (Interview 79), and the council was operational by August 15. Only one month later, the scandal-ridden Díaz Arriaga resigned, and Osorio nominated Viggiano to the court on October 5. Again by unanimous vote, the legislature ratified Viggiano on October 10, and only one week later Viggiano's peers elected her court president (*Diario de Debates* 2006b; Interview 79; Peralta 2006b; Veledíaz 2007). Thus, in less than seven months between March 21 and October 10, 2006, the council project appeared for the first time, was drafted into a bill, the required constitutional reform was approved, the council was staffed and operational, and Viggiano made the triple transition from council member, to *magistrada*, and ultimately to court president.¹³⁰

In Hidalgo's single-veto-player environment, judicial change was easy, as evidenced by the numerous unanimous votes in favor of the reform and the new court president. The content of the reform, however, reveals the lack of any serious commitment to strengthen Hidalgo's judiciary. Rather, local elites strengthened their hold on power by, in part, maintaining a subordinate and highly politicized judiciary. Indeed, the president of the administrative court is also a former PRI legislator (Interview 73), and senior judges frequently make transitions to and from political careers (Interview 78; Angeles 2008). Thus, the boundaries between branches, as well as between party and state, are obscured in much the same way as they were nationally from 1929 to 2000.

¹³⁰ As court president, Viggiano's changes are strongly associated with her personal image, leading many observers to cynical conclusions that reforms are merely cosmetic and that her high-profile leadership of the court is part of a political project to reach the governor's office in 2012 (*Milenio* 2007; Interviews 3, 66, and 90).

Thus, in the absence of electoral competition and programmatic commitments, the PRI continues to operate as it did decades ago, hindering meaningful judicial change. Stated otherwise, the PRI's unchallenged permanence in power is bad for courts.

6.4. Conclusion

This chapter tests existing theories of judicial reform at the subnational level in Mexico, integrating electoral competition and ideology, as well as external (politician-led) and internal (judge-led) influences on the judiciary. The analysis adjudicates among competing causal logics undergirding electoral theories of institutional choice, and highlights the importance of the ideology of both politicians and judges. The results do not support most of the commonly cited logics of reform. Only the opportunity logic and the veto player logic receive support, though the two logics produce competing effects. The opportunity logic generates positive political openings, but the veto player logic generates obstructive veto points. Overall, ideology explains meaningful parts of the reform. External and internal ideology – adding ideological preferences and a judge-centered account to the conventional preference-less and politician-centered accounts – explains most of the observed variation in court strength. Stated otherwise, we cannot know where reform will occur if we only look at electoral conditions. We must look fairly closely at politicians and scrutinize their ideological orientation. However, we must also look beyond exogenous conditions and identify other relevant policy actors and examine their ideological orientation, as well.

In the Mexican states, we see positive judicial change in non-competitive, single-veto-player environments with pro-reform governors, or in competitive, multi-veto-player

environments with pro-reform politicians and judges, with the latter playing a critical lobbying role to shape preferences of politicians. The outsider and reformist PRI governor in Aguascalientes shows this pattern, along with the progressive PRD governor and highly active pro-reform judges in Michoacán. In contrast, we see no change, or even negative counter-reforms, in low-veto-player environments with traditional, PAN politicians and conservative judges. In this regard, Hidalgo offers a historically typical example of unprogrammatic, PRI-dominated states. However, Aguascalientes in 2000-2001 shows that PAN-aligned government can also have negative policy consequences for courts, showing that unified government under historical opposition parties is not necessarily better than PRI dominance.

Ideology and judges play a meaningful role in each case of substantial change – reform and counter-reform in Aguascalientes, and reform in Michoacán. Notably, judicial lobbying has both positive and negative effects. The anti-reform judicial leadership generates counter-reforms in Aguascalientes, while two blocs of judicial elders struggle against each other in Michoacán, with the progressive, reformist bloc eventually gaining a slight (8-7) majority. These judge-led stories do not fit neatly into politician-centered accounts of conventional reform logics. Ideology, however, helps us understand how multi-veto-player contexts generate incentives for judicial lobbying, resonating with other judge-centered accounts of judicial change (Staton 2006; 2007), and how this lobbying shapes the preferences of politicians.

The results highlight the effects of programmatic commitments, underscoring the partisan nature of institutional change. Contrary to expectations, positive change in Aguascalientes comes not from the PAN, but from the reformist, neoliberal PRI

governor, Granados Roldán, who promoted reform as part of a market-oriented development strategy. This teaches us that economic development can motivate reform. Meanwhile, the left-of-center commitments of the PRD and sympathetic judges in Michoacán teach us that concerns about the quality of democracy can also motivate reform. The programmatic differences between the Granados PRI and the *cardenista* PRD highlight a tension, however, between market-oriented and democracy-oriented development strategies. Courts are vital to both markets and democracy, but the different development strategies emphasize different goals for judicial institutions. These differences can have serious consequences for civil rights and democratic citizenship (UNDP 2004) that are not yet fully explored empirically.

Overall, the integrated theoretical framework explains most variation, but the results offer two important qualifications to the framework. First, where a noncompetitive PRI environment was anticipated to have negative consequences for the courts, governor Granados in Aguascalientes shows that an “outsider” or “reformist” politician of neoliberal stripes can disrupt the status quo. Second, where the framework anticipated that a noncompetitive PAN-aligned government would have a positive effect on courts, Aguascalientes also shows that traditional and conservative judges and politicians with narrower, parochial interests can have negative consequences, combining to roll back earlier reforms. The narrow interests of judges in particular resonate with Staton’s (2007) admonition that the interests of judges do not necessarily coincide with the broader, public interest. A fuller explanation, therefore, should incorporate these interests under the preferences of both politicians and judges.

The differences between a reformist PRI governor in Aguascalientes and an anti-

reform PRI in both Hidalgo and Michoacán highlight intra-party variation across the Mexican states. The finding regarding Hidalgo's PRI is consistent with most literature on the party, but the differences in the PRI across the three states remind us of the importance of understanding local context. On the other hand, there is no evidence regarding a programmatic effect of the PAN in Aguascalientes, which is unexpected. The result may be a product of a non-ideological streak in the local PAN, or of the conservative Catholic base of the PAN in the state, but the finding is compelling in light of the broader, rightward shift in Mexico's national politics in the 1990s and early 21st century (Ai Camp 2007). If the PAN is similarly non-programmatic elsewhere, or erodes democratic institutions in similar ways, the general rightward shift of the country does not bode well for the judiciary.

Notably, PRI legislators in Aguascalientes have recently revived the original council project with initiatives in 2005 and 2007. As of February 2008, the PRI regained a majority presence in the Aguascalientes legislature for the first time since 1995. The surging PRI is now headed in one of two directions: (1) leverage its majority to approve the *re-reform*; or (2) back away from the reform, hoping to ride the winning trend to the governor's office in 2011 and exert its own influence over the judiciary. The path it chooses will help observers understand whether the PRI in Aguascalientes is committed to reform or simply a rebottled version of vintage PRI.

With the strong reform that was carried out under the PRD in 2006, Michoacán offers compelling, model-confirming evidence (Lieberman 2005, 484) that the left in Mexico bodes well for courts. Moreover, the motivations and mechanisms identified in this state highlight the role of ideas and ideology, and identify how social, political and

academic networks can overlap to strengthen reformist initiatives.

Future research that explores judicial or other forms of institutional choice in the Mexican states can help understand the nature and effects of cross-state variation within single parties in Mexico. Also, future research in Mexico, or other federal countries, for that matter, could select states with different patterns of divided and aligned government, exploring other aspects of competitiveness and policy formation. Moreover, the influence of Spanish-trained academics in Michoacán's reform suggests the unexamined role of epistemic communities in judicial change. Finally, initial evidence regarding executive interference with the operation of judicial councils suggests as yet unexplored separation of powers problems with mixed-membership councils in non-competitive contexts. Alongside this study, answers to these questions will contribute a deeper understanding of the political origins of court strength in new democracies. Chapter 7 turns to a small-N examination of Brazilian states, exploring these themes in second large federal system.

7. Small-N Analysis in Brazil: Acre, Rio Grande do Sul, and Maranhão

*Primeiro fuimos amigos ... depois fuimos instituições.*¹³¹
Sen. Tião Viana (PT), Acre

*O respeito às instituições deriva de concepções ideológicas e programáticas do
trabalhismo brasileiro.*¹³²
Fmr. Gov. Alceu Collares (PDT), Rio Grande do Sul

*Boa sorte com aquele Tribunal.*¹³³
Anonymous interview, Maranhão

7.1. Introduction

Building on the findings from the quantitative analysis, the qualitative examination here traces the political logic of judicial change in three Brazilian states: Acre, Rio Grande do Sul, and Maranhão. While the large-N portion of the analysis in Chapter 4 finds average effects supporting the positive relationship between competition and spending, multiple causal logics might underlie this relationship. In order to address this problem of behavioral equivalence, the qualitative analysis presented here adjudicates among alternate causal logics underpinning electoral competition. Moreover, despite the complex landscape of political parties in Brazil, there was still support in the large-N analysis for a positive relationship between particular political parties (PDT, PMDB, and PTB) and spending. Further, controlling for regional differences and volatility, there was support for the U-shaped relationship between ideology and spending that was so striking in Mexico. Thus, the analysis in this chapter also seeks to identify the

¹³¹ Translation: “First we were friends, then we were institutions” (see footnote 124, this Chapter).

¹³² Translation: “Respect for institutions draws from the ideological and programmatic conceptions of Brazilian labor traditions”. “Trabalhismo” refers to a long lineage of ideas derived from Getulio Vargas, João Goulart, Leonel Brizola, and Darcy Ribeiro, dating back to the pre-dictatorship PTB and carried on in post-authoritarian Brazil by the PDT (see pp. 253-255).

¹³³ Translation: “Good luck with that Court” (referring to the state supreme court, *Tribunal de Justiça*). See Appendix A for a list of acronyms and a glossary of legal terms.

causal logics or mechanics of the relationship between political ideology and court strength. In sum, this chapter offers a finer examination of the local politics of judicial strength in Brazil.

Recalling the rationale for case selection discussed in Chapter 3, Acre is a state that generates typical, well-predicted observations in the large-N analysis (i.e., Acre's "state-years" are typical). Thus, Acre is explicitly nested within the large-N analysis as a "model-testing" case, and is therefore a promising case in which to flesh out the theory that electoral competition and ideology exert positive pressures on court strength. Further, Acre is also a case of rising competition in which the left (PT) ascended to the governor's office in 1998 and has since been twice re-elected (in 2002 and again in 2006), generating a historical novelty in Brazil – a leftist stronghold. Thus, in order to capture the variation of Brazil's subnational electoral-ideological landscape, the research design includes two other states – Rio Grande do Sul and Maranhão – to complete the cases selected for small-N, controlled comparisons in this chapter. Where Acre represents movement away from the authoritarian baseline in the form of rising electoral competition and substantial leftward movement, Rio Grande do Sul represents movement away from the authoritarian baseline in the form of rising electoral competition and perfect party turnover every four years since 1982 – including three non-consecutive PMDB administrations – granting the state a competitive alternation that has been predominantly centrist. Finally, Maranhão represents the continuity of the authoritarian baseline – non-competitive elections dominated by the rightist PFL (now DEM) and the Sarney family – a party and set of traditional elites, respectively, sympathetic to the

“revolution of ‘64” and the military regime that ensued.¹³⁴

Reflecting the structure of Chapter 5’s examination of three Mexican states, the first part of this chapter defines “court strength” along three dimensions: (i) judicial spending (budgetary size and autonomy); (ii) judicial personnel; and (iii) physical infrastructure. This first part also classifies the three states examined here – Acre, Rio Grande do Sul, and Maranhão – along these dimensions, ranking them “low” through “high”. Change across these three dimensions reveals the strengthening (progressive, positive reform) or weakening (corrosive, negative counter-reform) of courts. Thus, *change* and *reform* are often used interchangeably here but, as was the case in Mexico, reforms are also distinguished from counter-reforms. The second part of the chapter focuses on tracing the causal process of change in each state, emphasizing critical turning points or markers of change, and identifying mechanisms and motivations that give a more textured, process-based account of causation than the correlation-based, average effects of the statistical analysis.

It should be noted that there are similarities and differences in the dimensions of court strength between the Mexican and Brazilian states. With regard to similarities, the first dimension of court strength in Brazil maps directly onto the first dimension of court strength in Mexico, emphasizing financial resources. This was also the dependent variable in the large-N analysis, so the dimension offers a bridge between the two methods of analysis. However, the second and third dimensions of court strength are different. Where the analysis in Mexico focused on stark cross-state variation in institutional design (judicial councils) and career structure, these judicial features are

¹³⁴ Actors on the right side of the political spectrum refer to the events precipitating regime change in 1964 not as a “coup”, but rather as a “revolution” (see Correia de Andrade 1989, e.g., “golpe, revolução, ou contra-revolução?”).

much more centralized and uniform in Brazil. This is true since the 1988 federal constitution and the wave of reforms to state constitutions that ensued, and it is especially true since the judicial reform of 2004, which created a national judicial council – the National Justice Council (*Conselho Nacional da Justiça*, or CNJ) – that supervises the administration of the entire judicial apparatus, including first-instance courts in all 26 states and the federal district (*CNJ Regimento Interno*). It also bears emphasizing that the nature of change in one of the variables in Mexico – institutional design, which related to the presence and characteristics of local judicial councils – was explicitly constitutional in nature. That is, the creation of a judicial council and the definition of its structure, powers, and composition required a reform of the state constitution, which in turn required supermajority support in the local legislature. This is not the case in Brazil. The changes along all three dimensions of court strength in Brazil are either (i) administrative in nature, requiring the judicial leadership to act, or (ii) legislative in nature, requiring only simple majorities in the local congress. Despite these operational differences, measures of personnel and infrastructure capture the administrative capacity of courts, which is what the measures in Mexico also aimed to capture. Therefore, despite differences in measurement, the underlying concept is the same, and the qualitative analysis here seeks to explain variation in meaningful changes in administrative capacity. Stated otherwise, there is a great deal of formal, constitutional uniformity across the Brazilian states, but the states vary in the real effectiveness of these constitutional provisions and in the real strength of their judicial institutions. The qualitative analysis is well-suited to explain this variation. This type of analysis is also well-suited to address mechanisms and motivations that are consistent or inconsistent with mechanisms and

motivations in Mexico, in spite of the constitutional nature of some changes in Mexico and the non-constitutional nature of local changes in Brazil.

To anticipate the main findings ahead, this chapter makes three principal arguments regarding (1) causal logics underpinning electoral competition; (2) the important role of ideas and ideology, (3) the extent to which the effect of ideology is conditioned by the baseline condition of the judiciary and the timing and sequence of reform efforts; and (4) the manner in which policy change moves across different levels of the regime.

First, recalling the theoretical discussion in Chapter 2, the main causal logics that frequently underlie electoral competition – re-election, signaling, insurance, and opportunity – do not receive empirical support. In contrast, the neglected logics of veto players and elite, patronage-preserving entrenchment do receive support. Notably, these two logics cut against conventional accounts of electoral competition in that they expect negative consequences from increasing competition. The veto player logic anticipates that increasing competition raises the number of relevant actors, i.e., veto points, and therefore hinders policy change. The entrenchment logic identified here describes how traditional elites engage in corrosive, non-ideological protection of patronage, which is unlike Hirschl’s (2004) positive logic of the entrenchment or preservation of liberal values and policies, and unlike the entrenchment carried out by Gillman’s (2002; 2006; 2008) ideological “partisan coalitions”. Thus, the analysis explores the understudied negative consequences of electoral competition, which help us understand why margin of victory had the unexpected positive effect in the large-N analysis (see Chapter 5). However, the analysis also emphasizes that expectations regarding the content or

direction of policy change are incomplete and imprecise without information regarding preferences and ideology. For instance, single-veto-player environments facilitate policy change, but only if dominant political actors actually *want* to change policy.

In this regard, the analysis highlights the role of ideas and ideology. This chapter argues that left-of-center politicians – from the PT, PDT, and PCdoB – tend to support judicial change more than their centrist or rightist counterparts. However, actors internal to the judiciary – judges – play key roles in shaping or triggering these preferences. A central part of the argument is that internal and external actors interact in crucial ways to shape judicial change, and that the effect of ideology is conditioned by the baseline condition of the judiciary and the timing and sequence of interactions. For instance, the PT has played a prominent role in the national judicial reform debate, presenting the first proposal for reform in 1992 and distinguishing itself for its promotion of an institution or agency to supervise the administration of the judiciary. Where the court's baseline condition is weak, parties on the left are seen as allies due to their support for progressive reform and institutional accountability, but also for their broader role in democratizing institutional practice. Conversely, where the court made early gains and the baseline condition marked by strength and autonomy, parties on the left – but especially the PT – are seen as encroaching on judicial independence and are viewed with hostility. Thus, internal actors in Acre and Maranhão have relied heavily on leftist politicians and other progressive actors, but internal actors in Rio Grande do Sul – where the judiciary enjoyed early autonomy and is widely viewed as a strong institution – recoiled at what they perceived as the PT's local and national efforts take away some of the power the judiciary had gained. This subnational variation in the effect of ideology is crucial to

understanding judicial change across Brazil's states, and resonates with the large-N findings regarding the conditional effect of ideology.

Finally, advocates for judicial change in the traditional, northern state of Maranhão have found an ally at the federal level in the PT-sponsored and newly formed National Justice Council (*Conselho Nacional da Justiça*, or CNJ). Critically, this is an administrative organ internal to the judiciary. Drawing on Keck and Sikkink (1998), the analysis considers how local actors activate and leverage the CNJ to generate policy change, resembling a policy “boomerang”. Additionally, following Snyder (2001a; 2001b), the analysis seeks to identify the federal footholds and other mechanisms that explain how this boomerang works to effect local change, exploring how policies of judicial change move across different levels of the regime. Where parties of the left have reached the executive office, the process of change has remained largely local as the judicial actors have been assisted by leftist administrations that exert meaningful influence in the strengthening of courts (Acre and Rio Grande do Sul). Where these kinds of parties have little programmatic expression or do not reach the governor's office (Maranhão), individual leftist legislators have helped, but the process of change has needed to move to a different level of the regime – the CNJ at the federal level. This process of institutional change that depends on actors at different levels of the regime enhances our understanding of subnational policy change in large federal systems.

Overall, a central feature of the argument advanced here is that judicial change in the Brazilian states has been *judge-led* but has relied on critical support from external actors. Existing accounts of change in judicial politics and public law often speak of a dichotomous process – “congress-centered” versus “court-centered” (e.g., Cameron

2005). A broader dichotomy that allows for the inclusion of other actors, e.g., societal organizations or interest groups, is the internal/endogenous versus external/exogenous dichotomy also advanced in Chapter 5. Internal or endogenous accounts of change emphasize the role of judges and other institutional insiders, while external or exogenous accounts emphasize the role of politicians or other institutional outsiders. This study contends that these different perspectives are not necessarily mutually exclusive. That is, they are both taking place. However, in Brazil, judges have shown the most initiative for change. Once judges have made their move, though, they have been most successful where they were met by sympathetic outsiders. In Brazil, these outsiders have consistently been leftist administrations or individual politicians. Importantly, judges often worked to shape or reframe the preferences of even sympathetic politicians and other actors. In sum, external conditions (electoral conditions and the preferences of politicians) and internal conditions (institutional and judicial preferences) both matter, but *judges move first*, activating projects for change and triggering or shaping the preferences of external actors.

7.2. Measuring Judicial Strength in Three Brazilian States

Benchmarks facilitate the measurement of court strength and the identification of positive and negative change. As introduced above, these benchmarks or metrics are: (1) *judicial spending*; (2) *judicial personnel*; and (3) *physical infrastructure*. Notably, the first metric – spending – is the same in both Mexico and Brazil. However, as noted in Chapter 1, Brazil’s judiciary is nationally more centralized and uniform institutionally than the judiciary in Mexico. Thus, institutional design and career structure – the second

and third metrics in Mexico – are not used here. Rather, the adequacy of staffing in terms of the number of judicial personnel, and the adequacy of physical working condition in terms of physical infrastructure capture the relevant variation in administrative capacity across the Brazilian states (see Chapter 1). As in Mexico, these differences capture palpable differences in the real-world structure and operation of local courts, differences that are meaningful to ordinary citizens. That is, differences in spending, personnel, and infrastructure capture whether local courts function well or not in any given state. It is also worth emphasizing that, in the aftermath of the military regime, the baseline condition in these states – the authoritarian baseline – was the hegemony of traditional, conservative elites, a condition in which judicial institutions were weakened by patronage and corruption. It is difficult to overstate the extent to which positive movement in each of these categories reflects movement away from this baseline.¹³⁵

First, *judicial spending* is measured as both (i) budgetary size and (ii) budgetary autonomy. Budgetary size captures the amount of judicial spending in per capita terms and is essentially the same dependent variable analyzed econometrically, creating a direct link to the large-N analysis. *Budgetary autonomy* captures the extent to which the judiciary has acquired effective independence to develop and propose its own budget as established in local constitutions, and to have this amount respected by the executive branch. Second, *judicial personnel* is measured as judges per 100,000 people, offering a metric of the professional capacity of the courts to attend claims and litigation relative to the size of the population. Finally, *infrastructure* is measured as square meters of space per 100,000 people, capturing the size of the judiciary’s physical installations and capital

¹³⁵ The singular possible exception to this statement is Rio Grande do Sul. The possibility of the state’s “judicial exceptionalism” is addressed in greater detail below, as well as the implications related to positive movement across these four measures of court strength.

investments relative to the population. Collectively, these three measures provide a picture of the administrative capacity of courts.

Following the three dimensions of judicial strength outlined above, Table 6.1 reports court strength in Acre, Rio Grande do Sul, and Maranhão. Judicial spending, judicial personnel, and infrastructure considerations are noted separately, ranking each state in each category. Taken together, these dimensions of court strength reveal courts are strongest in Rio Grande do Sul (“high”), moderate in Acre (“medium/high”), and weakest in Maranhão (“low”). A more detailed discussion of this ordering follows below.

Table 7.1. Summary of Judicial Strength in Three Brazilian States.

	AC	RS	MA
1 Judicial Spending	High	Med/High	Low
Budgetary size			
Per capita spending 1985-2007 average (constant 2000 R\$)a	79.44	50.85	15.89
% of total spending (average 1995-2007)a	5.74	5.23	5.53
Per capita spending (current 2003 R\$)b	100.52 (2/26)	68.57 (10/26)	33.04 (22/26)
Per capita spending (current 2007 R\$)b	137.11 (2/26)	112.12 (8/26)	44.58 (26/26) ^e
Budgetary autonomy ^c	Med	High	Low
2 Personnel	Med/High	Med	Low
Judges per 100,000 2003	8.49 (5/25)	6.94 (10/25)	3.93 (25/25) ^e
Judges per 100,000 2007	7.5 (10/25)	7.6 (9/25)	4.30 (24/25)
3 Infrastructure	Med/High	Med/High	Low
Area (m ²) per 100,000 2003 ^d	4244.93 (5/24)	3310.73 (11/24)	1125.11 (23/24)
Area (m ²) per 100,000 2007 ^d	3401.43 (9/26)	3852.84 (5/26)	915.79 (26/26) ^e
SUMMARY	Med/High	High	Low

a Source: IPEA.

b Source: CNJ.

c Evaluation is from qualitative analysis discussed below.

d Data for 2003 do not distinguish between total area and “usable” area. Data for 2007 reported here is for “usable” space, but rankings are similar with either figure, and Maranhão is last in both.

e Maranhão is in last place in these three categories.

Judicial Spending

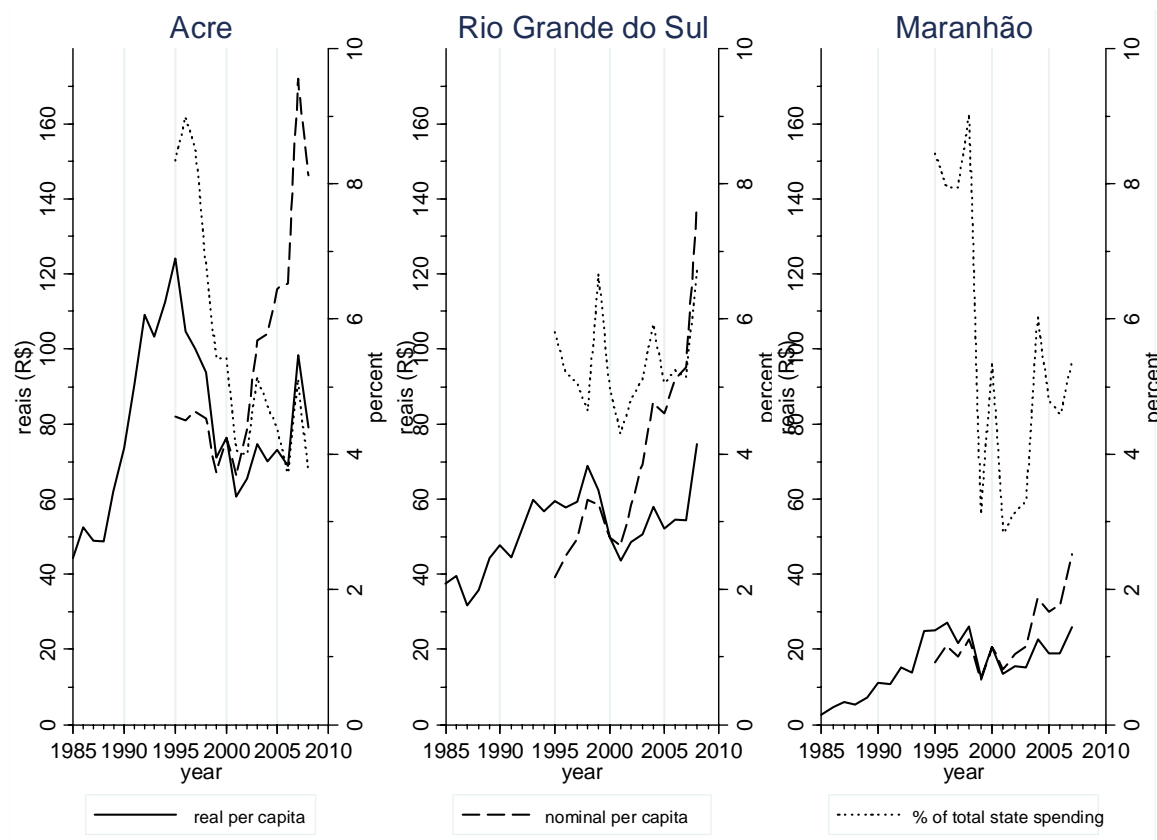
Figure 7.1 graphs judicial spending across the three states from 1985-2007 in (a) nominal per capita terms (current amounts), (b) real per capita terms (constant amounts 2000=100), and (c) as a percentage of total state spending. Overall, court budgets are highest in Acre, followed by Rio Grande do Sul and Maranhão.¹³⁶ Table 7.1 supports this

¹³⁶ In all three states, nominal judicial spending increases after 2001, but the real value of this spending is eroded by inflation (which reached 10.55% and 13.73% in 2002 and 2003, respectively), so the nominal increases effectively amount to modest institutional gains or simple maintenance of real spending.

ordering, showing Acre spends the most per person on its courts out of these three states, followed closely by Rio Grande do Sul. In both Figure 7.1 and Table 7.1, these two states appear to be converging over time, in both nominal and real terms. However, Maranhão remains far behind, consistently spending less than half of what the other two states spend on courts. Though some caution is in order in interpreting pre-1995 values due to the economic instability, hyperinflation, and multiple currency changes between 1985 and 1994,¹³⁷ the ordering remains of Acre (high), Rio Grande do Sul (medium/high), and Maranhão (low). Notably, spending levels in Maranhão are generally less than half that of either of the other states, and are staggeringly low early in the time period. Even in the rough and resource-poor decade of the 1980s, Acre and Rio Grande do Sul were far outspending Maranhão. By 2007, the relative distance between the states had closed, but the first two states still spent more than twice the amount in Maranhão.

¹³⁷ The currency in 1985 was the *cruzeiro*, which later changed to the *cruzado* (1986), *cruzado novo* (1989), back to the *cruzeiro* (1990), and then the *cruzeiro real* (1993) before becoming the *real* in 1994 (Banco Central do Brasil 2007).

Figure 7.1. Judicial Spending in Three Brazilian States.



Considering that spending levels are generally regarded as healthy if courts receive more than one per cent (1%) of the state’s total spending, the elevated percentages in these three states are remarkable. All states average more than five per cent (5%) for 1995-2007, and only Maranhão falls repeatedly below four per cent (4%). However, spending in both Acre and Maranhão, as a proportion of total state spending, is fairly erratic. Acre fluctuates widely in the 1990s, approximating nine per cent in 1996 but later stabilizing around four or five per cent since 2000. Maranhão’s judicial spending remains erratic through recent years. After approximating nine per cent in 1998, the judicial budget plunged to three per cent in 1999, and fluctuated between three and six per cent through 2007. Thus, as a share of state spending, these state courts seem to be

doing well. However, the erratic patterns of judicial spending as a proportion of state budgets, especially in Maranhão, suggest the budgetary process itself is discretionary or arbitrary.

Court budgets in Acre were historically low, but Figure 7.1 shows two key moments. The first occurred in the mid-1990s with a large increase in spending. The second change took place in 2001-2006.¹³⁸ Rio Grande dos Sul also experienced two important moments: one in the late 1980s and early 1990s, and another from 2002 forward.

Maranhão's court budget remains one of the lowest in all of Brazil, despite substantial increases in 2006 and 2007, and changing little over the previous years. Indeed, as of 2007 – which are the latest figures available across all states from both the National Justice Council and the Treasury Department – Maranhão ranked *last* out of all 26 Brazilian states, spending only 44.58 current *reais* per capita on its courts. In sum, as of 2007, Acre had one of the highest judicial budgets in the country, slightly higher than Rio Grande do Sul's, and more than three times the amount budgeted in Maranhão.

Budgetary autonomy also varies across the three states. Rio Grande do Sul's autonomy with regard to the preparation and exercise of its budget has been strong since 1991-1992, when it acquired the practical and effective responsibilities formally granted to it in the 1989 constitution. However, conflict has arisen repeatedly over the years regarding executive cuts to the size of judicial budgets, and this conflict has generated a

¹³⁸ Data from the Acre court itself also shows a steep increase beginning in 2001. According to their reports, the court's budget increased by 50% from 2000 to 2001, by another 49% from 2001 to 2002, and then by another 31% from 2002-2003. Thus, the Acrean judiciary in 2003 was enjoying a cumulative budgetary increase of 191.01% over the last three years, almost triple the amount allocated in 2000 (TJAC 2002; 2005). Notably, these percentages reflect nominal changes, not the real changes emphasized in the analysis.

new and sporadic kind of political struggle in the state. That is, there is sense among some sectors that the judiciary has grown and strengthened enough, and that it need not continue to receive as much money as it did in the past. Indeed, there have been two high-profile challenges by governors regarding the amount of money requested by the judiciary, one in 2001, and another in 2007. Thus, where the state followed a pattern similar to other states of struggling for resources and autonomy over a long period of time, the judiciary appears to have crossed a threshold of financial strength and autonomy in the 1990s, and there is now a reversal of dynamics, where the judiciary is seen as having sufficient resources (perhaps even privileged), and the political branches now seek to check the growth of the judicial budget. Thus, where political oversight of the judiciary would have been seen as an invasion of judicial independence, political branches might now be playing an accountability role. The changing nature of judicial-executive and judicial-legislative relations in Rio Grande do Sul maps onto the conceptualization of judicial independence as a continuum between autonomy and accountability.

Autonomy is lower in both Acre and Maranhão. In both states, the judiciary formally prepares its own budgetary proposal, but the executive still frequently cuts the judiciary's proposal and controls budgetary increases throughout the year in the form of "supplements" (*suplementação orçamentária*). Notably, the kinds of high-profile, legal challenges that have occurred in Rio Grande do Sul do not occur in these states. Critics of this budgetary practice emphasize that executives purposely provide the judiciary with an inadequate budget at the start of the year as a strategic effort to maintain a subordinate judiciary. In Acre, judicial budgets are higher than they have ever been (and higher than in Maranhão), but there is still memory of the consistently impoverished judiciary.

Moreover, at least as of 2007, the governor continued to reduce the budgetary proposals of the judiciary, the governor controls the disbursement of funds on a monthly basis, and the governor controls budgetary supplements. The chronic insufficiency of financial resources, coupled with the possibility of receiving supplements throughout the year, requires the judiciary to remain deferential to the executive throughout the year in order to receive the supplements. As one interviewee in Acre noted, this practice was also known as “*troca de liminares*”, or the “trade of decisions”, whereby the governor would expand the court’s budget *only after* the court decided favorably in a case involving the executive branch as one of the parties to litigation. In the words of one local judge, budgets are “the lifeblood of the judiciary” (“*o orçamento é a vida do judiciário*”), so the combination of budgetary weakness and supplements created a condition of vulnerability, becoming “*o calcanhar de Achilles*”, the Achilles’ heel of the judiciary (Interview 136). In short, the practice created a chronic dependence or subordination of the judiciary vis-à-vis the executive.

Judicial Personnel

Both Acre and Rio Grande do Sul are well-staffed when it comes to judges. That is not to say that there is no need for improvement; rather, both rank in the top half of Brazil’s states. However, the adequacy of staffing is a recent improvement in Acre, dating to the hiring of more than 20 new judges in 2001. By 2007, the two states were fairly indistinguishable in the ratio of judges per 100,000 people, with a ratio of 7.5 in Acre and 7.6 in Rio Grande do Sul. Maranhão is once again at the opposite end of the spectrum. In fact, Maranhão ranked last in judicial personnel in 2003 with a ratio of 3.93

judges per 100,000, and by 2007 had only climbed one place to the penultimate spot with a ratio of 4.30.

Infrastructure

In terms of physical infrastructure, Acre and Rio Grande do Sul again rank fairly high. Both are in the top half of states in this category, as well, with Acre ranking fifth and ninth in 2003 and 2007, respectively, and Rio Grande do Sul ranking 11th and fifth. By 2007, the two states were fairly close, at 3401.43 square meters per 100,000 people (Acre) and 3852.84 square meters (Rio Grande do Sul). In contrast, Maranhão again lags far behind. Maranhão ranked second-to-last in 2003 with only 1125.11 square meters per 100,000 people, and was in last place in 2007 with 915.79 square meters.

In sum, while no single variable above perfectly captures the administrative strength of local courts, each variable is a reasonable approximation of a meaningful dimension of court strength, and taken together they offer a compelling picture of court strength across space and over time in the Brazilian states. Courts function well in Rio Grande do Sul, reasonably well in Acre, but not so well in Maranhão. The picture that emerges is one of high strength in Rio Grande do Sul, medium/high strength in Acre, and persistently low strength in Maranhão.

What explains this variation? What are the political sources of court strength in these Brazilian states?

7.3. Causal Analysis

Overall, the results do not support most of the logics underpinning electoral competition. The only logic with positive consequences that receives support is the

opportunity logic in which judges take advantage of political openings or the “softening” of the status quo to mobilize reform initiatives. The veto player logic also receives support, especially in Rio Grande do Sul, where once the judiciary reached a threshold of institutional strength it has been able to block attempts by the executive to limit the judicial budget. However, the results show the most consistent support for the role of ideas and ideology. Progressive groups of judges have been instrumental in raising the reform agenda and lobbying and striking for policy change, and left-of-center politicians have consistently supported reformist initiatives. Table 7.2 summarizes the patterns of causation observed in the three Brazilian states. The following sections deepen the analysis.

Table 7.2. Summary of Causal Analysis in Brazil

	Acre	Rio Grande do Sul	Maranhão
re-election logic	No	No	No
signaling logic	No	No	No
insurance logics			
1 – profit maximizing	No	No	No
2 – self-protection	No	No	No
3 – policy-preserving	No	No	No
opportunity logic	Yes	Yes	No
veto-player logic	Yes	Yes	No
Ideology	Yes	Yes	Yes
	Reformist, first-instance judges strike on eve of TJ presidency of sympathetic senior judge; senior judge has deep roots in PT and is close friends with new, PT governor	PDT governor plays key role in granting financial and administrative autonomy; governor also close friends with TJ president	Progressive, first-instance judges pushing for a more “democratic,” influence by progressive currents from Rio Grande do Sul; two leftist politicians, from PT and PCdoB, are only external support
Summary	Late change, but strong and once it gets started, driven by reformist judges and PT governor	Early and strong change; following new federal and state constitutions, judicial strikes and pressure from senior judges highlights need for policy change; center-left PDT governor approves change, delegating financial and administrative autonomy to court	Judiciary remains opaque and intransigent; progressive, first-instance judges gained leadership of state judges’ association in 2002, and since the have lobbied and litigation for change, being especially effective by leveraging the National Justice Council (CNJ)

7.3.1. Courts in Leftist Strongholds

Several causal dynamics underlie the increase in real spending in Acre in the mid-1990s, and these dynamics shaped additional administrative gains and continue to shape

judicial strength in Acre today. While there were sporadic civil service exams and hirings in the early and mid-1990s, as well as a salary increase for judges in 1992 (the last until 2003), this analytic narrative highlights three key moments identified in interviews: (1) 1995-1996, which overlapped with the PT's first municipal administration in the state capital (1993-1996) and the administration of *Desembargador* (Des.)¹³⁹ Jersey Pacheco Nunes (1995-1997) as president of the state supreme court (*Tribunal de Justiça*, or TJ); (2) 2000-2003, which overlapped with the TJ presidency of Des. Arquilau de Melo Melo (2001-2003); and (3) the recent period since 2006.

1995-1996: Corrosive Gains from Within, Progressive Strength from Without

Interviewees note that the presidency of Des. Jersey Pacheco Nunes on the TJAC (1995-1997) was an important period in the court's history (Interview 127; 136; 159). Pacheco Nunes is credited with a physical expansion of the judiciary, especially in the area of small claims courts. However, despite these accomplishments, interviews and archival evidence show that the changes were not his idea and also indicate that the means by which Des. Pacheco Nunes achieved these gains compromised the court's integrity and weakened its legitimacy. Specifically, the creation of small claims courts (*juizados especiais*) were mandated by a federal law passed in 1995 that gave states until 1996 to form the new courts (LF 9.099/95). Thus, the motivation for the small claims courts was not Pacheco's own. Moreover, once faced with the legal requirement to create new courts, Pacheco decided that, rather than engage the political branches for more

¹³⁹ *Desembargador* is the title of judges on the state supreme court, which are all second-instance or appellate judges in the state's judicial structure (see list of legal terms in Appendix A). The term is somewhat awkward and unwieldy, even in Portuguese, as "embargo" translates as a "lien", "injunction", or other legal obstacle or "blockade", i.e., embargo, so a "des-embargador" is someone who removes these embargos. Many interviewed judges expressed a humorous disdain for the title, and some openly wished to change it.

funding, he would unilaterally increased legal fees across the state (TJAC Resolution No. 001/96). Thus, he raised the money to build and fund new courts – money that did not come from the state’s budget. This new revenue source accounts for at least a portion of the large spike in judicial spending as a proportion of total state spending in the mid-1990s shown in Figure 6.1.

However, this funding mechanism was unethical and likely illegal. Interviewed judges agreed that Pacheco should not have acted on his own to raise the legal fees (e.g., Interview 136). In fact, his fee increase was challenged in a constitutional action in 1997 (ADI 97.00065-0). In that suit, the PFL challenged Resolution No. 001/96 of February 27, 1996, by the Council of Magistrates (*Conselho da Magistratura*), of which Pacheco Nunes presided over as court president (*TJAC Regimento Interno*, art. 16). In that resolution, the Council grants itself the authority to raise legal fees (*custas judiciais*). The Council did so after comparing the legal fees in the nation’s federal district with the fees in the state of Acre, noting the disparities without acknowledging that they were comparing a large, mostly rural state with the nation’s capital, and went on to raise Acre’s legal fees to match those in Brasilia. Symptomatic of the state supreme court at this time, the TJ engaged in the ethically controversial act of deciding a matter in which one of its own organs and effectively its president were a party to the litigation, and rejected the PFL’s argument on March 1, 1998, without offering any detail. However, it does not appear that any of the parties were notified of this outcome because more than five years later, on August 20, 2003, the court receives a request for information regarding the case. Deciding the case anew on October 29, 2003, more than seven years after it was initially filed, the court now ruled the PFL’s challenge was moot, i.e., there

was no longer a controversy,¹⁴⁰ because of a law passed in 2001 (Lei 1422/2001) that replaced Resolution 001/96. Thus, the court argued, since the challenged resolution essentially no longer had any legal force, the case against the resolution disappeared. This decision relied on procedural formalities in order to “decide without deciding” the very real constitutional conflict before the court.

Making matters worse, the higher legal fees collected by the court were not going into the state’s general fund, but were being deposited directly in a special fund that had just been created on November 11, 1995 (Lei 1.168/95), and that was managed only by the court (*Fundo Especial para a Instalação, Aparentamento, Aperfeiçoamento, e Desenvolvimento das Atividades dos Juizados Cíveis e Criminais*, or FUNAJE). Thus, the court was arbitrarily raising legal fees and costs, and the new law left the court free to manage and spend this money without interference or oversight from any other branch. In 2002, the state’s public prosecutor (*Ministério Público Estadual*, or MPE) challenged this arrangement in a separate lawsuit, arguing that the concentration of revenue generation and spending powers in a single branch was unconstitutional, and perhaps even a criminal case of corruption, or *improbidade administrativa* (ADI 2002.000334-0).¹⁴¹ However, the case was delayed without any action for more than three years as the original judge assigned to it, Des. Eliezes Mattos Scherer, retired and the case was not re-assigned to a new judge, Des. Francisco Praça, until February 17, 2005. On October 8, 2005, the court decided against the MPE, finding that the law creating the FUNAJE posed no direct violation to the text of the constitution and dismissing the case (“*inexistência de violação*”).

¹⁴⁰ The court refers to the process as extinguished, or “*extinto*”, because it has lost its object of litigation – “*perdeu seu objeto*” (ADI 97.000065-0).

¹⁴¹ “*Improbidade administrativa*” covers acts of “unlawful enrichment” and misuse of funds by public officials, as well as broader issues regarding the honesty or character of public administration, and can carry both criminal and non-criminal (civil) sanctions (LF 8429/92).

direta com extinção de processo”).

In sum, while Pacheco Nunes did indeed expand the judiciary by increasing spending to create the small claims courts, the motivation was not his own and the mechanism he employed was of dubious legality. Thus, this “change from within” had a corrosive effect on the local legitimacy and reputation of the court, a stain interviewed judges still remembered uncomfortably.

Interviews also identify another major change in the period 1995-1996, this one unequivocally positive – a judicial outreach program called the Citizen Project (*Projeto Cidadão*). The project was originally inspired by a study of the national statistics office, IBGE, which found that nearly 80% of Acre’s population did not have any official government identification (Interview 159).¹⁴² Obtaining official documents, therefore, became the necessary first step towards effectuating a fuller sense of citizenship, including legal or “civil” citizenship (see Marshall 1965; O’Donnell 1993; UNDP 2004). By targeting this problem, the Citizen Project was extraordinarily popular and received many awards nationally and internationally, but, contradicting some accounts that attribute the entire project to Pacheco, it was again not an initiative of the courts. Rather, it was a program designed by the PT’s municipal administration in Rio Branco under Jorge Viana, specifically its secretary of education, Arnobio “Binho” Marques, who was later elected governor of Acre in 2006 (Interview 127). The program received support from within the judiciary, especially from Des. Arquilau de Melo Melo. However, it should be noted that the program originated with Marques and the PT, and the courts only

¹⁴² The lack of official documents is a major obstacle to citizenship in bureaucratic Brazil, where any interaction with the state requires the presentation of proper documents and identification. In the judicial arena, the lack of documents translated into an access to justice issue. Without the right documents, individuals could not file legal claims, request government services, legally marry, register the birth of a child, obtain work permits, and a host of other issues.

came on later as partners in its funding and execution (Interview 127; 159). The role of the courts was and remains meaningful, however, as the judiciary provided funding and lent its full institutional support to the program, bringing judges and the judicial process to neighborhoods and eventually moving beyond the state capital to carry basic legal proceedings, including marriages, other legal certificates, and small claims resolution to cities in the interior of the state. Interviews indicate the program also received federal funding, which may also help explain the rise in spending during this period, especially the high percentage of judicial spending as a portion of total state spending (Interview 116; 148; 192).

Importantly, while the IBGE study drew attention to the problem of documentation, it was the PT and not another party or entity that designed this program specifically to address and resolve the problem. In doing so, the PT was motivated by the incorporation of large, marginalized sectors into Acrean society, but the inclusionary mission of the project is also consistent with the PT's programmatic preferences and its strong foundations in social movements and activist networks in the state. Also, Melo was a founder and lawyer for the PT before becoming a judge, so his support for Projeto Cidadão from within the judiciary resonates with the ideological motivations motivating such a program. Thus, the Citizen Project is an instance of "change from without" that draws on principled-ideological motivations outside and inside the judiciary – originating in forces external to the judiciary, triggered by a federal agency but motivated also by political ideology, and finding an ideologically sympathetic advocate within the courts.

2000-2003: Progressive Pressures from Within Meet External Support

Alongside *Projeto Cidadão*, interviews also identified the period between 2000

and 2003 as a second important moment of positive judicial change in the recent, post-authoritarian history of Acre's judiciary. In late 2000, first-instance judges and local court staff (*servidores*) went on strike in Acre, asking primarily for a larger budget for the judiciary, an increased number of judges and support staff throughout the state, and improvement to the physical infrastructure of the courts. In mid-2003, the judges again went on strike, and again demanded a larger budget, the hiring of more judges, and a salary increase. Despite being internal movements that were similar in strategy, the first strike was short and successful, while the second strike was long, it embittered even judges who were originally sympathetic, and it ended without any gains.¹⁴³

Why were the two outcomes different?

On December 4, 2000, first-instance judges initiated a general strike. During the previous week, work stoppages and slowdowns (*paralisações*, or *operações tartarugas* – literally “operation turtle”), as well as intentionally minimal staffing (*atendimento plantonista*) prefaced the strike. In other words, a week of labor-related disruptions led up to the strike as judges and court staff lobbied the judicial leadership and made their demands known (*Página 20* 2000, 1, 4). As these actions did not have any effect, the full strike ensued and first-instance courts shut down. Adair Longuini, then president of the state judges' association (*Associação dos Magistrados do Acre*, or ASMAC),¹⁴⁴ noted that the governor was offering the judiciary a budget of R\$29 million for 2001, but that

¹⁴³ The legality or constitutionality of civil service strikes, especially in the judicial sector, constitutes an ongoing and lively debate in Brazil and elsewhere. Judges and other public officials at the highest levels have differing opinions. In practice, strikes by judges and other branches of the public sector are very common in Brazil. For a discussion of the debate over the right of judges to organize and strike in the Spanish transition to democracy, see Hilbink (2007b). For recent coverage of the first ever strike by judges in Spain, and for comments about the frequency of strikes by judges in other countries, e.g., Portugal, see *Público* (2009). Notably, there has never been a strike by judges in Mexico (see Chapter 6 and comments in Chapter 8).

¹⁴⁴ As of 2007, judge Adair Longuini became *desembargador*, promoted to the state supreme court (TJAC).

the courts required a budget of R\$72 million, more than twice the amount proposed by the executive (*Página 20*). Longuini's leadership of the 2000 strike was important because he had been the judge who presided over the trial of the murder of Chico Mendes, and he was a highly regarded public figure in the state with near folk-hero status, especially among his judicial colleagues (Interview 140; Interview 178). In making ASMAC's case, Longuini stressed that Acre was in dire need of more judges to staff courtrooms, that the physical structures of the judiciary were in need of repair and deteriorating rapidly, and that the judiciary required a greater number of support personnel to attend to the daily business of the courts. To address these needs, ASMAC proposed two new civil service exams (*concurros*) – one for judges and one for court staff – and the upgrading of numerous court buildings and facilities. Quoting Longuini, “We only want them to do something to stop the impending failure of the judiciary. The situation has become unbearable, to the point that we cannot do our work. We can no longer merely depend on budgetary supplements” (*Página 20*).¹⁴⁵ Longuini was calling for a budget that would be sufficient to put an end to this practice. Thus, ASMAC's argument for a new, more adequate judicial budget aimed to strengthen the staffing, supplies, and physical infrastructure of the judiciary, but these administrative improvements would also yield inter-institutional, political gains, strengthening the separation of powers and constitutional practice.

On December 5, after a week of stoppages and slowdowns and only one full day of striking, the judges obtained a partial success and returned to work. The entire process lasted one week, and the gains included the following: (1) a new judicial budget of R\$37

¹⁴⁵ Author's translation; original Portuguese: “Queremos apenas que façam alguma coisa para deter o estado de pré-falência do Judiciário. A situação chegou a um limite insuportável, a ponto de não dar mais para trabalhar. Não podemos mais depender apenas da suplementação orçamentária.”

million, which, although it was not the full budget the judges were requesting did amount to an increase of over 27% from the governor's initial offer, and an increase over the 2000 budget of 50% (the 2002 budget increased further, adding another 49% from 2001 to 2002 (TJAC Informe 2002 and 2005); (2) a new exam process (*concurso*) to hire judges starting in May 2001; and (3) a commitment to hire 20 new judges by November of 2001 (Batista 2000). By most accounts, the 2000 strike was a successful labor action.¹⁴⁶ Though all demands were not met, a reasonable compromise was achieved and the courthouse doors were closed for only one day.

The second strike began on May 5, 2003 (Interviews 127, 136, 140; *A Gazeta* 2003, 1). This time, however, the process and the outcome would be different. On June 11, after 36 days away from work and bitter confrontations with the judicial leadership, the judges ended the strike and returned to work without having obtained, in full or in part, a single one of their demands. Two of the demands in 2003 were substantially similar to the ones in 2000 – more personnel and improvements in supplies and infrastructure. However, a critical new demand was a salary increase for judges, who had not received such an increase in 10 years (Machado 2003).

With regards to salaries, governor Viana had been negotiating an increase of 22% since 2002. Notably, this increase would not amount to a full improvement of 22% in real terms due to the reductive effects of inflation, but it would have amounted to an improvement of four or five per cent. However, the increase had not yet been established, and the judges were now asking for a 45% increase. Viana kept offering 22%, but the ASMAC rejected the offer on May 28, saying that it was the same offer that had been in

¹⁴⁶ Court staff remained on strike for an extra day and were not fully satisfied with the outcome (Batista 2000).

negotiation since 2002 (*Consultor Jurídico* 2003).

The salary issue was related to another issue – the chronic departure of recently hired judges for jobs in other states. According to judge Jordani Dourado, vice-president of ASMAC in 2003, there had been an “exodus of judges” from Acre after the 2001 hirings. Three of the new hires had decided to transfer to neighboring states of Rondônia and Mato Grosso,¹⁴⁷ and at least two more judges were preparing to retire (Paulo 2003). Thus, having made personnel and staffing gains in 2001 by hiring 20 new judges, these gains were slowly being eroded rather than, as promised, used as a platform for the judiciary to continue growing to meet the state’s needs and demands.

Moreover, aside from losing a raw number of judges, Dourado was expressing a concern about the pattern of new judges leaving Acre for jobs in other states. That is, beyond reducing the number of judges in the state, this pattern created a chronic need to re-hire for the same position, meaning that the state was also losing valuable expertise acquired from experience on the job – experience that could not be replaced even with new hires. Judges had been calling attention to this issue, but there were no plans by the judicial leadership to hire replacement judges, much less build on the 2001 hirings. By the end of April 2003, a week before the strike, the judges announced their intended labor action if negotiations did not advance. By May 5, the courts were closed for the second

¹⁴⁷ Notably, this is a common complaint in many of Brazil’s western and northern states – that new judges often do not have any local roots or connections, so they have little incentive to remain in the state beyond the two-year probationary term of “substitute judge”. Given the national structure of civil service exams and the judicial career, a law school graduate from a southeastern state like São Paulo, where there are numerous law schools and a congested judicial job market, can take an exam in a state like Acre and then slowly migrate closer to family in São Paulo as jobs open in Rondônia, Mato Grosso, or another state. Thus, as is the case in other peripheral states (non-southeastern), local *acreanos* resent the hiring of judges who are unlikely to remain in the state, a practice that creates a chronic deficit in personnel and expertise as these judges leave and a chronic expense to conduct new exams to re-hire for the same position. In short, an organizational characteristic of the national judicial career generates strengths in terms of uniformity and centralization at the national level of the regime, but simultaneously creates weaknesses for some state judiciaries that must be confronted at the local level.

time in less than three years, and they would remain closed for five bitter weeks of striking. To this day, judges in Acre remember the 2000 strike fondly and the 2003 strike with discomfort (e.g., Interview 140).

The different outcomes of the two labor actions can be better understood by noting the different conditions inside and outside the institution in 2000 and in 2003. The president of the TJ was different, the president of the ASMAC was different, and the local and national political context was different.

In late 2000, Francisco das Chagas Praça had just a couple of months left in his two-year term as TJ president, which was scheduled to end in February of 2001. Praça was unpopular and the source of much dissatisfaction in the judiciary. Some judges referred to his administration as a “valley” (*vale*) in the recent history of the judiciary, also describing him as “*inviável*”, translated literally as “not viable” (Interview 136; Interview 140). Indeed, Praça likely contributed to the strike not only because he was perceived as a poor leader of the judiciary, but also because of an inability to negotiate with the judges. Indeed, the new court president, Arquilau de Melo Melo, had to step in earlier than anticipated. Melo,¹⁴⁸ the same judge that had supported the PT’s *Citizen Project* in 1995, was a *desembargador* that had just been selected to become the next president for the 2001-2003 term. Despite the fact he was not scheduled to take the leadership position for nearly two more months (on February 1, 2001), Melo negotiated the resolution of the strike with judges and court staff in the first week of December 2000 (Batista 2000). Several judges identify Melo as not only being pivotal in the strike’s

¹⁴⁸ Naming conventions in Brazil require some clarification. Unlike many other Latin American countries, Brazilians regularly refer to even prominent public officials by their first names or even nicknames, e.g., “Fernando Henrique” rather than Cardoso, or “Lula” rather than President da Silva. Further, if using only the last name, it is often unclear whether to use the first, second, or subsequent last name. Here, I adopt the naming convention of using the final last name.

resolution, but also credit his two-year administration of the judiciary as a positive “*marco*” or reference point in the trajectory of the state judiciary (Interview 140; Interview 148; Interview 192; *Página 20* 2000b).

Melo was effective for several reasons. First, with a background in journalism and rights advocacy in the state, Melo had then gone to law school and was both a founder of the PT in Acre and later a lawyer for the PT and CONTAG, the National Association of Agricultural Workers (Interviews 127; 140). Thus, Melo had very strong roots in local social movements and enjoyed an aura of legitimacy and moral authority, which also helps explain his support of the Citizen Project in 1995-1996 discussed above (Interview 140). A judge since 1986, Melo had worked in precarious and even perilous conditions through some of the state’s most difficult years, including the waves of land-based conflicts in the 1970s and 1980s that saw the murders of activist leaders Wilson Pinheiros and Chico Mendes (see Keck 1995), the rise of organized crime related to trafficking across the Bolivian border with Acre, and the suspicious murder of a sitting governor.¹⁴⁹ Given Melo’s background, and especially his roots in the PT, it is not surprising that he supported the judges’ right to strike. That is, even as the leader of the judiciary, he thought that the judges he was going to supervise *should* strike if they thought they had a grievance against his office (Interview 127). This perspective endeared him to many judges and court staff, facilitating the resolution of the strike (Interview 148; Interview

¹⁴⁹ As late as 2003, the murder of Pinto still remained controversial. One state legislator, Moisés Diniz (PCdoB), went so far as to demand a public debate regarding events. Diniz noted that the official investigation in 1994, a Parliamentary Investigatory Commission (CPI) on political violence (“*CPI da pistolagem*”), did not yield satisfactory conclusions. For instance, Pinto’s murder was officially declared a “*latrocinio*” – a robbery resulting in death – but when Pinto’s body was found, he was still wearing his Rolex watch and \$10,000 U.S. in cash were still in his possessions. Moreover, Pinto was killed in São Paulo, where he had travelled specifically to testify in a massive fraud case involving business interests in Acre. Finally, three men were arrested in connection with Pinto’s death, but all three committed suicide while incarcerated. Before killing himself, one of these men testified that he had been given money to kill Pinto (*Rio Branco* 2003b). Understandably, many observers find the official conclusions unsatisfactory.

192). After only one day of striking, and two months before he was supposed to take office as court president, Melo resolved the strike on December 5, 2000.

The outcome of the 2003 strike was different, in part because Melo was no longer president. The presidency of the TJAC rotates every two years and the sequence of the rotation is determined by seniority. Thus, following Melo's administration (2001-2003), Ciro Facundo took the reins of the TJ in February of 2003.¹⁵⁰ Facundo's administration (2003-2005) was marked by inter-branch conflict and an inability or unwillingness to negotiate with ASMAC during the second strike of 2003. From the start of the strike, Facundo declared himself against the strike and stated an unwillingness to negotiate with the judges so long as they remained on strike (Albuquerque 2003a; *Rio Branco* 2003). This position contrasted starkly with that of Melo. Moreover, Facundo publicly attacked the judges' demands as selfish and threatened to fire temporary and discretionary employees, including judges who were still within the two-year probationary term (*juizes substitutos*). He also threatened to withhold salaries for each day a judge or other employee was away from work. Further, Facundo appealed to public fears and insecurity by saying the judges' strike would cause innocent people to remain in jail without a hearing, or that dangerous criminals might be released early. Coupled with his unwillingness to talk with judges until they returned to work, these harsh and polemic tactics polarized and personalized the strike, generating much more animosity than in 2000 and creating a politically volatile situation (Rosas 2003; Zilio 2003) that even

¹⁵⁰ That is, Facundo was not elected for this leadership position. It was simply his turn. This raises the issue of the undemocratic access to the TJ and the democratic deficit at the cupula of the judiciary. However, more relevant to the current discussion, the TJ did not have a choice as to who it could choose to lead the court at this stage. This could be interpreted as a design flaw in the institution, since it would benefit the institution to be able to select its leaders to be better able to deal politically with problems or issues on the horizon. For instance, perhaps the TJ saw the 2003 strike on the horizon – or at least the very real possibility of a strike – and could have decided to put a different person in charge, or even re-elect Melo.

reached the national press (Scolese 2003).

The differences in judicial leadership from 2000 to 2003 explain a large portion of the different outcomes of the strikes. This conclusion is supported by the fact that the external political leadership did not change between the two time periods. Jorge Viana was governor in 2000, and he was also governor in 2003.

The most salient feature of the 2000-2003 period was the fact that Melo and Viana shared roots in the PT and were close, personal friends. This feature of executive-judicial relations disappeared in 2003 when Facundo became president. Despite clashing on several issues, including the best resolution of the strike, Melo and Viana had the capacity to communicate effectively with each other, negotiate and compromise. Multiple interviews noted this capacity – and their friendship – as playing a central role in the strike’s resolution (Interviews 127, 136, 140). Indeed, at the inauguration of Adair Longuini as a new state supreme court judge in 2007, Senator Tião Viana, ex-Governor Viana’s brother and also of the PT, mused that “first we were friends, then we were institutions”.¹⁵¹ This statement nicely captures the mapping of the close, private, personal ties between Arquilau and Jorge onto their public, professional interactions as court president and governor. In short, friendship and ideological principles formed a productive bond between the two men.

This was not the case in 2003. As noted above, Facundo (the new court president) openly antagonized the striking judges and court employees. He and Viana appear to have been members of rival political groups. In 2002, Viana’s rivals initiated a legal case to try to prevent Viana from running for re-election in the October elections of that year,

¹⁵¹ Original Portuguese: “Primeiro fuimos amigos, depois fuimos instituições.” Sebastião “Tião” Viana, PT Senator from Acre, Dec. 7, 2007. Public remark at ceremony in Rio Branco, Acre, at which author was present (author’s own translation).

and these rivals, led by a local businessman and politician, Narciso Mendes (PPB), engineered the process in the Regional Electoral Tribunal (TRE-AC) to win their case and bar him from that election. While these local, conservative political elites were successful in the TRE and sought to delay the ability of the national electoral tribunal (TSE) to review the case, the TSE heard the appeal and reversed their decision, noting several improprieties and allowing Viana to run for (and win) re-election.¹⁵² After this high-profile episode was over and Viana had been re-elected, Facundo began his

¹⁵² In 2002, when Viana was running for re-election, his main opposition was Flaviano Mello (PMDB). Mello was an ally of Nabor Junior, also of the PMDB, and Narciso Mendes, of the conservative, right-leaning PPB, who together formed the *Movimento Democrático Acreano* (MDA). Narciso Mendes was also owner of a local newspaper, *O Rio Branco*, and he used his newspaper as a platform from which to support Mello's candidacy and launch scathing editorials (which he often wrote himself) against Viana and tendentious articles leading up to the October 2002 election. Furthermore, there were also clear signs that conflicts between conservative and progressive elites had penetrated the judiciary. Led by Mello and Mendes, the MDA had initiated litigation to bar Viana from running against him in the gubernatorial election. Mello argued that Viana had used the resources of the state to promote his campaign – an argument that was based on the new logo Viana's administration designed for public works (a small, stylized tree bearing the title "*Governo da Floresta*", "Government of the Forest"). The case rose to the regional electoral court, *Tribunal Regional Eleitoral do Acre* (TRE-AC), where the court decided against Viana on August 23, preventing him from running in the upcoming October 2002 election, and barring him from political office for three years. The process against Viana, however, was extraordinarily politicized from the beginning, initiated and promoted by the PT's political rivals, and with strong indications of organizational and procedural irregularities. For instance, then-president of the TRE-AC Miracele de Souza Lopes Borges altered the selection of judges to the TRE by doing away with a seniority rule that was intended to favor the selection of judges with longer careers marked by independence and integrity. Having done so, Lopes Borges assigned this volatile case to one of the newest judges she had just selected under the new rules (Global Justice, *Ofício JG/RJ 188/02*). The high-profile case attacking Viana received even more attention when one of the three appellate judges on the court publicly revealed his misgivings about the lack of political neutrality on the TRE, noting the recent changes to the composition of the TRE and adding his own observations that the judges were politically aligned against Viana (Amaral e Bittar 2002; Ribeiro 2002; Vitale Jayme 2002; Global Justice, *Ofício JG/RJ 188/02*). Ultimately, according to the high electoral court (TSE), the TRE's decision suffered from four main problems: (1) the legal claim in the litigation was not appropriate; (2) even if the claim were allowed, the alleged wrongdoing should have been charged in a different court (forum) – in regular courts and not in an electoral court (i.e., this was not an electoral matter, but a civil or perhaps criminal matter); (3) evidence against Viana was admitted without ever giving Viana an opportunity to respond to it; and (4) Lopes Borges changed the rules for selecting judges to the TRE in the 12 months leading up to the 2002 elections, guiding the selection of at least two electoral judges of questionable integrity, one of whom had a substantial conflict of interest in the case. After Viana and the regional electoral prosecutor appealed, the nation's Supreme Electoral Tribunal (*Tribunal Superior Eleitoral*, or TSE) reversed the TRE's decision, recognizing that Viana's actions as governor were not illegal and that the procedural flaws in the case should have prevented the case from ever being filed in the first place (TSE *Acórdão RO-593/AC*). Moreover, the TSE overturned two other TRE decisions regarding candidacies. Ironically, one of these candidacies was that of one of Viana's rivals mentioned above, Narciso Mendes, who was approved by the TRE but later barred by the TSE. Due in part to these irregularities, by September 29, 2002, one week before the elections, the TSE launched a three-day inquiry into the TRE-AC.

leadership at the TJ. In his newspaper, Narciso Mendes – who had just recently been attacking Viana – greeted Facundo’s inauguration with enthusiasm, congratulating Facundo in an editorial that suggested a proximity between the two and praising Facundo as a “man of character”. The editorial was accompanied by a foto of Facundo under a title that read “*Respeito às instituições*” (“respect for institutions”). Directly below this complimentary text, there was a photograph of Miracele Lopes, the TRE president who had also been attacking Viana, accompanied by a defense of her position and strong language critical of Viana (*Rio Branco* 2002a). Notably, in the very same week, Melo honored Viana with the highest award given by the judiciary, the *Colar do Mérito Judiciário*, recognizing Viana as the only person outside the judiciary to receive it in at least two years (*Rio Branco* 2002b). Thus, part of the difficult relationship between Facundo and Viana was likely due to tensions springing from their different political sympathies. In contrast to Melo’s deep roots in the PT and his personal proximity with Viana, Facundo appears to have been closer to traditional local elites with roots in the conservative, pro-military PDS.

In addition to this underlying political rivalry, Viana was in difficult position in 2003 because he did not want to bring the executive branch into labor relations internal to the judicial branch. Meanwhile, Facundo did not want to negotiate with judges until they returned to work, and suggested that Viana exercise his influence to get the judges to end the strike. Thus, the judicial leadership (Facundo) and state executive (Viana) found themselves arguing about who should negotiate with the ASMAC (Paulo 2003). It should be noted that Facundo’s position was anathema to the normative constitutional provisions regarding judicial autonomy. That is, he should have been defending his authority to

decide administrative matters of the court, and perhaps even praising Viana for not wanting to interfere in a labor dispute within another branch.

Regardless of the specific nature of the tension between Facundo and Viana, a tension existed that did not exist during Melo's presidency of the TJAC. In this regard, the change from 2001-2003 to 2003-2005 marked a fundamental switch in the state's executive-judicial relations. Three central features of the 2001-2003 period were: (a) a close, personal friendship between the court president and the governor, (b) ideological alignment between the court president and governor, and (c) a leftist, PT-based content to this ideological alignment. Importantly, this affective and ideological proximity disappeared in early 2003, when Facundo took over as court president.

A second factor that influenced the different outcome in 2003 was the composition of the ASMAC leadership during the strike.¹⁵³ Adair Longuini, the judge who supervised the Chico Mendes trial, was no longer president of the ASMAC. Though still active in the ASMAC and supportive of the strike, he had been replaced in the ASMAC presidency by Maria Cezarinete Angelim (*Rio Branco* 2003). A judge with a much lower public profile than Longuini, Cezarinete was now the ASMAC's point person in negotiations with the Tribunal and the political branches. Thus, the legitimacy and leverage of the association's leadership was weaker in 2003 than in 2001.

Third, the national political context had shifted by 2003, altering local and national conditions. In Acre, the PT's Viana was elected for his second term in 2002. However, the PT had also just won a historic presidential election in 2002. Luiz Inacio "Lula" da Silva had won – on his fourth attempt – placing the center-left workers' party

¹⁵³ Court staff also strike in 2003, mobilizing as of May 8 (Albuquerque 2003b) and engaging in a partial work stoppage on May 13 (Albuquerque 2003c).

in the presidency for the first time in the party's 23-year history. Therefore, in January 2003, Viana began his second term under very different national conditions, paralleling the start of the first PT national administration under Lula. Viana was no longer an "opposition governor", but rather a PT governor with a PT president. As such, Viana was subject to different attention, pressures, and strategies at the national level.

One of the policy areas in which these pressures became manifest was precisely that of judicial reform. Indeed, in December 2002, even before he took office in January of 2003, Lula was already highlighting the need for judicial reform, noting how it had been blocked for several years and that the 1988 Constitution was still not fully effective (*Gazeta Mercantil* 2002; Mattos and Juliano Bacile 2002). His new Minister of Justice, Marcio Thomaz Bastos, cited judicial reform and police reform as his two top priorities on December 18, 2002, the day he was first nominated for the cabinet position (*Folha de São Paulo* 2002). The seriousness of the Lula administration with regards to following through with judicial reform became evident early on, beginning with the January 7 announcement by Bastos of his intention to create a Secretariat of Judicial Reform for the purposes of analyzing, promoting, and coordinating the reform, followed quickly by the creation of the new secretariat within the Ministry of Justice on April 30, 2003 – the *Secretaria de Reforma do Judiciário*. Lula also had an early opportunity in the first week of May to appoint three new justices (*ministros*) to the 11-member STF, one of which had a 12-year history with the PT and favored "external control" of the judiciary – a centerpiece of the reform project (Vitale Jayme 2003a; 2003b).

A series of high-profile confrontations followed between the Lula administration and the judiciary with regard to the reform. On May 13, Lula's referred to the judiciary as

a “black box” (*caixa preta*) in a statement about the need for reform (*Folha de São Paulo* 2003). After a group of seven state judges from the southeastern state of Paraná said they were “personally injured by the insults” and suggested they might sue under a law similar to defamation (“*crime contra a honra*”), Min. Gilmar Medes, the chief justice of the nation’s supreme court, gave Lula 48 hours to explain the “caixa preta” comment (*Folha de São Paulo* 2003). Less than a week later, the new Secretary of Judicial Reform, Sergio Renault, commented that the reform would aim to free judges from administrative duties so that judges could focus on judging (“*Juíz tem de julgar, não de administrar*”), generating a backlash from judges, including the president of the federal labor court (*Tribunal Superior de Trabalho*, or TST), Francisco Fausto, and the president of the *infra*-constitutional supreme court (*Superior Tribunal de Justiça*, or STJ), Nilson Naves. Fausto exclaimed “the mask has fallen” (“*a máscara caiu*”), noting that Renault’s comments revealed what the judiciary feared all along, that Lula’s true intention with the reform was to control the careers of judges and the way judges did their work. Similarly, Naves argued that the very creation of the Secretariat for Judicial Reform threatened the separation of powers, asking provocatively whether Lula would like it if the judiciary created a secretariat to reform the executive (Gallucci 2003).¹⁵⁴

In the midst of these May events and with the topic of judicial reform on the list of national priorities, Lula visited Acre on May 8, a visit that had been announced on April 22 (Aquino 2003). This was going to be Lula’s first visit to the state as president, and it was a high-profile meeting with all the governors of the northern region of the

¹⁵⁴ Naves was echoing sentiments voiced earlier in the reform process. See, e.g., Sadek (2001, 128), quoting an April 28, 1999, statement by Wagner Antônio Pimenta, then president of the TST: “Invertendo a hipótese que alguns defendem, seria desejável, por exemplo, que o Legislativo fosse controlado por um conselho de membros do Executivo e do Judiciário?”

country, attended also by 11 cabinet members (*Página 20* 2003; Xangai 2003). The strike by local judges began on May 5, just three days before Lula arrived, so there were many observers who were upset by the strike for reasons unrelated to the condition of the judiciary. That is, some were simply upset because of the appearance that the strike was timed for Lula's visit, or timed to leverage Lula's visit in favor of the ASMAC's negotiating position, but which in the end made the judiciary – and perhaps the state – look bad in front of the president.

Moreover, a controversial pension reform was also part of the national debate, and judges were mobilizing around the country in opposition to some of the provisions of the reform. The national judges Association of Brazilian Judges (*Associação dos Magistrados Brasileiros*, or AMB), an umbrella organization with a membership of over 10,000 judges that networks closely with state associations like the ASMAC, was a central player in the pension reform debate, along with the association of federal judges (AJUFE), who also supported the Acre strike. As early as May 13, the AMB expressed its support for ASMAC's strike in Acre (Albuquerque 2003d). Interviews highlight the fact that AMB insiders convinced the ASMAC to extend the strike beyond points where it might have been resolved in order to build support for the nationwide mobilization against the pension reform (Interview 136; 140). This evidence helps explain why the ASMAC turned down Viana's offer of a 22% salary increase, which on the surface appeared to be a reasonable offer. Finally, a contemporaneous journalistic account notes that two AMB vice-presidents were also in the state on June 10 when the strike ended, observing that the Acre strike needed to end in order to maintain national unity among judges with regard to pension reform (Rosas and Arruda Dias 2003). In short, the strike

became nationally strategic, not locally strategic. Perhaps unexpectedly, the sacrifice of local goals for the sake of a national strategy disappointed a portion of the ASMAC membership, leading many to withdraw their support for the strike, and some even returned to work. In 2007, judges still expressed a bitterness over the 2003 strike, noting that it went on too long and that the goals were not clear.

The timing of the strike around Lula's visit to Acre may have been strategic or coincidental. More importantly, the overlap of local judicial needs, a national judicial reform, and a national pension reform generated deep misgivings within the judiciary itself about the 2003 strike. These misgivings weakened the ASMAC's position vis-à-vis both the hostile judicial leadership (Facundo) and the governor, contributing to the end of the strike without achieving any gains.¹⁵⁵

2006-2007: Deepening Administrative Reforms

The third and last episode of judicial strengthening examined here began in 2006 with the decision to participate in the early stages of a program run by one of Brazil's best law schools, the Getulio Vargas Foundation (FGV) in Rio de Janeiro (*Direito-Rio*). The new program is framed as a business administration degree for the judiciary, or *MBA do Judiciário*. Notably, the program is coordinated in part by the director of the *Direito-Rio* who is also a former counselor on the CNJ, Joaquim Falcão. As of November 2007, Acre's judiciary was one of only four states in the country participating in the program, which required significant financial investment (800,000 *reais* for the full program in 2006 and 2007, or approximately \$400,000 U.S.)

Notably, governor Viana agreed to pay for part of the program, and as of 2007 all

¹⁵⁵ Ultimately, on December 4, 2003 – six months after the end of the strike – Viana and the TJ agreed on a salary increase for judges of 22.4%, which is the same figure that was being negotiated since 2002 and that was offered by Viana on May 28 ().

of Acre's judges were participating in monthly trainings in how to improve the administration or *gestão* of justice. Indeed, interviews emphasized the fact that this word, *gestão*, signaled a recent but central shift in the internal culture of the judiciary. One interview noted that even six months earlier (in April or May of 2007), there was little awareness of the administrative hurdles to improving the delivery of judicial services (Interview 136). However, since the beginning of the MBA do Judiciário program, judges were collectively experiencing a proverbial opening of the eyes, and that the institutional leadership in this regard was key. That is, judges were learning how to keep better track of their caseloads, how to manage their workload, and how to prioritize different types of cases. The same judge that noted a cultural change in the last six months highlighted the fact that judges used to wear bloated caseloads as a badge of honor; if a judge had thousands of cases backed up, it was considered a good sign within the judicial culture, a kind of bragging right. This changed after the FGV courses. Judges who brag in this old-fashioned way are now criticized. Internally, among judges, more value has been placed on reducing the total volume of cases via good administrative and management practices (Interview 136).

7.3.2. Courts under Competitive Alternation

As was the case in Acre, several causal dynamics underlie the process of judicial strengthening in Rio Grande do Sul, and these dynamics shaped additional administrative gains and continue to shape judicial strength in Rio Grande do Sul today. This analytic narrative highlights two key moments: (1) 1989-1992, which overlapped with both the approval of the state constitution (1989) and the first PDT administration in the state

(1991-1994); and (2) 1999-2002, which was the first PT administration in the state.

1989-1992: Positive change from within supported by the left

After the 1988 federal constitution and the 1989 state constitution, which established the normative framework for judicial autonomy, the most important moment in the recent history of Rio Grande do Sul's judiciary occurred between 1989 and 1992.¹⁵⁶ In 1989, following the passage of the state constitution, judicial leadership challenged the persistence of unconstitutional encroachment by the executive. Further, in 1989 and 1991, first-instance judges in Rio Grande do Sul took to the streets, striking against the governor's intrusion in the judicial budget and the daily administration of the courts. Judges demanded higher salaries, but they were also directly challenging the intrusion of the political branches into the affairs of the third branch of government. Thus, a core part of the dispute involved the judiciary's real independence in defining and managing its own resources as an equal branch of government. In short, judges were contesting the gap between constitutional theory and constitutional practice. By 1992, the governor had granted the judiciary its functional autonomy, closing the theory-practice gap. Indeed, despite lobbying and occasional inter-branch litigation that has continued to the present, the years between 1989 and 1992 were crucial – gaining financial and administrative autonomy *in practice* was a critical achievement in the post-authoritarian trajectory of the state's courts.

¹⁵⁶ Interviews note that the single most important moment is the passage of the Federal Constitution in 1988, and the passage of local constitutions in Brazil's 26 states to adjust to the federal standard. However, at the local level, the real struggle involved making the terms of the local and federal constitutions effective. With regards to the judiciary, this meant turning constitutional provisions about "budgetary autonomy" and "administrative autonomy" into reality, which was ultimately a struggle to remove powers from the executive (see, e.g., Interview 194). The extraordinary rise in litigation is also mentioned alongside the Federal Constitution, linking the two together. That is, the 1998 "citizen constitution" identified so many individual right and created new mechanisms of vindicating those rights that it effectively caused the explosion in litigation.

Following the Federal Constitution of 1988, Rio Grande do Sul's 1989 state constitution called for the financial and administrative autonomy of the judiciary (CE Rio Grande do Sul, arts. 93, 95). In substantive terms, the governor (and politicians in general) needed to relinquish control over the planning and exercise of the judicial budget, and also needed to relinquish control of managing the judiciary, including decisions regarding the organization of judicial districts (*comarcas*), the creation of new posts in the judiciary (clerks, secretaries, judgeships, etc.), and all purchasing, building, and institutional planning. In short, constitutional norms regarding the proper separation of powers needed to be put into practice. This change posed a twofold challenge – (i) the executive needed to give up power over a large and geographically extensive institution, and (ii) the judiciary needed to rise to the occasion, assuming new powers and responsibilities.

The first signs of change appeared in 1989. On November 6 of that year, Oscar Gomes Nunes, President of the judiciary (TJRS), filed a document with the state legislature (ALERS). In his complaint, Gomes Nunes noted that Governor Pedro Simon (PMDB), through the state's revenue department (*Secretaria de Fazenda*), had cut the judiciary's proposed budget for 1990 (*Processo* 08615/89-6). Specifically, the court had made an original budgetary proposal earlier in July, and the governor had reduced this amount. This kind of reduction was standard historically among the practices of executive domination, but it was now in violation of the 1989 state constitution, and the court's leadership was taking the unexpected step of formally contesting this violation before the other political branch. On November 30, the legislature forwarded a final budget to the governor with an increase in the court's budget (*Processo* 07293-1.00), and

on December 4, Dep. Titio Livio Jaeger, president of the legislature's Finance and Planning Committee, wrote to Gomes Nunes, letting him know that the legislature had voted to correct the governor's action and increase the court's budget (*Processo* 08615/89-6, p.6). Thus, the judiciary successfully challenged the executive's encroachment on its budget, resolving the issue through the legislature.

The following year, in October 1990, Alceu Collares was elected governor, inaugurating his administration in January of 1991. Collares, trained as a lawyer, had been a core member of Leonel Brizola's left-of-center *Partido Trabalhista Brasileiro* (PTB) prior to the 1964 coup, had witnessed the controversial transfer of the PTB's insignias to a rightist, pro-military group in 1980, and had since joined Brizola in reorganizing core members of the original PTB into the PDT.¹⁵⁷ In 1991, he became the first PDT governor of Rio Grande do Sul, and one of only four PDT governors¹⁵⁸ in Brazil's conservative transition to democracy.¹⁵⁹ Collares was elected with 60% of the vote in second round, and took office in January 1991.

Paralleling the rise of Collares to the state executive, Nelson Luiz Púperi (1990-1992) and José Barison (1992-1994) rose successively to the presidency of the TJRS. Púperi initiated a project to grant the TJ a fuller and more effective administrative

¹⁵⁷ This event inspired Carlos Drummond de Andrade's famous poem, "*Eu vi [um homem chorar]*" ("I saw [a man weep]"), describing Brizola's tearful reaction before the TSE, during which he tore a piece of paper on which he had written the letters, "PTB" (Drummond de Andrade 1980).

¹⁵⁸ First was Leonel Brizola himself in 1982, winning the governorship of Rio de Janeiro after returning from exile during most of the previous 20 years. Brizola won in Rio again in 1990 (alongside Colares's victory in Rio Grande do Sul and the victory of Albuíno Azeredo in Espírito Santo in the same year) (IUPERJ-Nicolau Dataset).

¹⁵⁹ Despite holding the first popular elections for president in 1985, the victorious ticket was composed of a pacted combination of the progressive Tancredo Neves (president) and the conservative José Sarney (vice-president). One day before inauguration, Neves fell ill and died. In an irony that seems tragically fitting, the conservative and pro-military Sarney became president, thus giving a kind of continuity to the military regime until 1989 (Mainwaring, Meneguello, and Power 2000, 176-177). For a more detailed discussion of the persisting strength of conservative parties in Brazil, see Mainwaring, Meneguello, and Power (2000).

autonomy (Axt and Biancamano 2004), and by 1992, the judicial budget was established at 6% of all state spending, an extraordinary achievement (*Processo* 0632/01.00/ALRS/91-2, p.4). However, the project of administrative autonomy was consolidated under Barison, as Collares transferred the accounting and other technical responsibilities of developing a judicial budget, along with all financial planning responsibilities, to the judiciary. Interviews highlight that the transfer was carried via intense negotiations between Des. Tedesco, the judge in charge of administering the TJ's finances, and Orion Cabral, the Treasury Secretary under Gov. Collares. Further, the transfer of these administrative responsibilities was initiated by Barison, and the transfer was successful for two reasons: the two men shared a close friendship, and Collares was ideologically inclined to respect the judiciary's institutional autonomy (Interview 183; 190; 194). Indeed, Collares himself acknowledged that Barison initiated the proposal, and he described his displeasure with the historical subordination of the judiciary to the executive (personal interview).¹⁶⁰ Collares noted that he and the PDT respected the functions and powers of the three branches because of "ideological and programmatic conceptions" drawing from the "trabalhismo brasileiro", the center-left tradition that dates back to the pre-1964 PTB. Contemporaneous legislative records also reflect that Collares's treasury secretary, Orion Cabral, expressed surprise at the way the judiciary had been treated by the executive "as an adolescent" prior to 1991, and that Rio Grande do Sul was the first state to grant effective administrative autonomy to its judiciary

¹⁶⁰ Barison was deceased at the time of this research. However, I interviewed Governor Collares, who acknowledged that Barison was the one who approached him with the initiative to grant effective autonomy to the judiciary, and that Collares simply wanted to support the project once Barison proposed it. It would be in Collares's own interest to claim this action as his own idea (indeed, he spoke of it as one of the greatest achievements of his administration), so the fact that Collares did not try to take credit for the original initiative enhances the validity of the conclusion that it was Barison who provided the initial motivation for change. The other two interviews cited here are from judges who overlapped with Barison's tenure as court president.

(ALERS-CFP 1993).

Overlapping with the challenge by Gomes Nunes and with the fuller projects of administrative autonomy pursued by Púperi and Barison, first-instance judges twice went on strike between 1989 and 1992 (Interview 183). These have been the only strikes by judges in the state's post-authoritarian history, and their early timing in contrast to the later strikes by judges in Acre in 2001 and 2003 is another indicator of the early internal pressures for judicial change in the state.

Thus, as was the case in Acre, a pair of ideologically sympathetic friends rose to the leadership of both the judiciary and executive, the judicial leaders initiated a project to grant fuller autonomy to the courts, and the executive supported the project, responding to the pressures of two recent strikes by judges, the friendship with Barison, and his own ideological preferences. As noted above, the friendship helped make the process successful, and the governor's ideological stance also complemented Barison's initiative, drawing on the PDT's deep roots in the state (with Brizola's PTB in the pre-dictatorship era) of legality, democratic institutions, and democratic practice. As summarized by one interview, "there was friendship and ideological will; the friendship was determinative"¹⁶¹ (Interview 194).

1999-2002: The left clashes with the court

After the change in 1991-1992, interviews note that several years of institutional growth and credibility followed until 1999 (Interview 194). However, in that year, Antônio Carlos Magalhães (ACM), a traditional strongman or *coronel* from the PFL in the northeastern state of Bahia, initiated a high-profile, politicized attack on the national

¹⁶¹ Author's own translation. Original statement: "Houve amizade e vontade partidária ... a amizade foi determinante."

judiciary that eventually took the form of a congressional investigation (*CPI do Judiciário*), focused primarily on the apparent misuse of funds by a labor court in the state of São Paulo (Sadek and Arantes 2001, 12).¹⁶² Fearing that ACM's political maneuvering might result in forced changes that would be less palatable than changes generated from within, the judiciary nationwide re-started the stalled national debate on judicial reform (Sadek and Arantes, 12). For many judges at both the local and national levels, therefore, 1999 saw a confluence of criticisms against the judiciary. On one hand, ACM was mounting a politicized attack on the courts. On the other hand, other politicians, judges, and lawyers were renewing constructive but nonetheless pointed critiques of the judiciary's faults and noting areas in need of improvement. One judge noted that 1999 marked the beginning of "the disparaging of the court, which also reached Rio Grande do Sul" (Interview 194).¹⁶³

Many of the criticisms against the judiciary, however, were legitimate. In this regard, one of the foremost proponents of judicial reform was the PT. In fact, a PT legislator – Hélio Bicudo – proposed the first reform project in March of 1992 (Sadek and Arantes, 7). Moreover, the reform contemplated an external mechanism of administrative accountability (*controle externo*) in order to enhance the institution's transparency and efficiency, and the PT was the foremost proponent of this kind of oversight, seeking, as noted in the discussion of Acre, to open the "black box" of the judiciary. Indeed, a PT legislator was put in charge of this part of the reform when the debate re-ignited in 1999, and a 1999 poll showed the PT had more federal legislators

¹⁶² ACM was apparently motivated to maintain a high public profile over the next few years in order to run for president in 2002, but was reacting to a legal action brought against him by the AMB for disparaging remarks he made against the judiciary (Sadek and Arantes 2001, 13, note 7).

¹⁶³ Original Portuguese: "começou o desprestígio do judiciário, que também chegou no Rio Grande do Sul".

who favored this accountability portion of the reform (98%) than any other party (Sadek 2001, 157-158). Notably, many senior judges saw “external control” of the judiciary as an affront to their institutional independence and a violation of the separation of powers (see discussion of Acre). This was especially the case in states where the judiciary had already grown substantially and acquired administrative autonomy, as was the case in Rio Grande do Sul. Thus, judges in Rio Grande do Sul perceived their institution was under attack from both traditional elites in the form of ACM, and from new, leftist forces, most prominently in the form of the PT. Indeed, interviewed judges fondly recalled Collares and the left-of-center PDT, but expressed bitter memories of a “disrespectful” Dutra and the PT (Interview 183; 194). In short, the climate of policy change was very different beginning in 1999, and the strong baseline condition of the TJRS following several years of growth since 1991-1992 made the reformist PT a natural enemy.

In this climate of hostility between the PT and the courts, Olívio Dutra began his first year as the state’s first PT governor. Exacerbating the situation, Dutra’s administration also overlapped with an economic crisis that spread from Asian economies and Russia to Brazil, causing revenues to shrink and creating enormous pressure for the reduction of public spending.

In this context, the PT had a highly contested relationship with the courts from 1999-2002. In efforts to reduce spending, the PT challenged the high levels of spending of the TJRS, leading the judiciary to formally challenge the executive’s reduction of the judicial budget as Gomes Nunes did in 1989.¹⁶⁴ The national debate regarding judicial

¹⁶⁴ This kind of challenge occurred again in 2007, for the 2008 budget, when governor Yeda Crussius (PSDB) reduced the judiciary’s budget. In Rio Grande do Sul, the PSDB has a distinctively neoliberal feel, heightened under the administration of Yeda Crussius, so their particular rationale could be categorized under the rubric of fiscal discipline or austerity. While the PSDB’s reduction in 2007 was fairly drastic, the

reform and pressures of the economic crisis made a difficult combination for the relationship between the PT administration and the courts. From the judiciary's perspective, the PT appeared unexpectedly as a negative influence, seeking to "check" the judiciary's power both financially and administratively. From the PT's perspective, local judicial budgets had become bloated and *too strong*, leading to perceptions that judges had become privileged, bourgeois elites. Indeed, interviews identified this perception among the political left of "*o juiz burguês*" (e.g., Interview 144).

The phenomenon of PT-TJRS contestation is important because it signals the extent to which the effect of ideology on court strength may be conditioned by existing institutional strength, i.e., the level of the judiciary's institutionalization, and by the timing and sequence of reform efforts. That is, in states where the courts are very weak, the left may exert a positive influence in order to build effective institutions, balance the separation of powers, and strengthen democratic practice. However, in states where the courts are already strong – as was arguably the case in Rio Grande do Sul by 1998 – the left may exert more of an accountability function. Viewed solely from the perspective of judges, the left may be positive if judges are trying to rise from irrelevance and create more open institutions, but the left may be negative if judges are already strong and the left seeks to check judicial budgets and salaries, or oversee the institution in any way. This latter phenomenon of supervision for the sake of accountability may actually trigger recent memories of executive encroachment on the judiciary, i.e., of the subordination

motivations for reducing the judiciary's budget were similar to the PT's – the sense that judicial spending was high in Rio Grande do Sul, indeed too high. Thus, the leftist PT and the center-right PSDB were both trying to do the same thing with regards to judicial spending. Importantly, Dutra was trying to control judicial budgets in a time of crisis, while Crussius was doing so in a time of economic growth, though the state did have a budget crisis and has had budgetary problems for a long time. Also, these two conflicts were qualitatively different from the executive control of the judicial budget that existed historically and that Gomes Nunes was challenging in 1989.

and vulnerability of the courts vis-à-vis the political branches. Indeed, in RS the court was already strong locally and reacted negatively to the PT's demands for accountability. The PT was also supporting the national judicial reform project, especially the portion of the project about external controls and accountability mechanisms. This was a positive innovation for judges who worked in courts in the poorer and less institutionalized parts of the country, especially the north and northeast, but it was negative for judges who worked in highly functional and professional institutions in some of the wealthier and more institutionalized states, especially in the south.¹⁶⁵ Specifically, the PT had long advocated the "external control" (*controle externo*) of the judiciary. This position mapped onto the preferences of progressive judges inside weak or captured institutions, e.g., Maranhão, but clashed with the preferences of judges, even progressive ones, inside strong, autonomous institutions, e.g., Rio Grande do Sul.¹⁶⁶

In sum, the left was an ally of judicial reform early in the strengthening process in Rio Grande do Sul, as evidenced by the relationship between the PDT and the judiciary in the early 1990s. However, once the judiciary grew stronger on its own – becoming one of the models of institutional strength for the rest of the country – the prospect of being

¹⁶⁵ An additional factor in Rio Grande do Sul in particular is regional pride, or *gauchismo*. The idea of a national, centralized power that could oversee local affairs – which were generally (and correctly) regarded as functioning better than many of the national institutions – was offensive to gauchos on a cultural-ideational level.

¹⁶⁶ This friction between the PT and judges in strong institutions mirrored tensions over the national judicial reform project. The PT initiated the reform project and was leading the way in the promotion of an external mechanisms of accountability, the proposed National Justice Council. However, judicial memories of the previous council – an organ created by the military regime to control the judiciary, which was eradicated by the 1988 constitution – generated animosity against the new proposal for a council. Of course, the new proposal had nothing to do with the authoritarian model employed during the military regime, but the judiciary had grown in strength and independence since 1988 (see, e.g., Garouda and Ginsburg 2009, 111). Plainly stated, judges – especially federal judges and local judges working within strong institutions – resisted giving up their newfound strength. The resistance is understandable in historical context, but the point highlighted by the comparison between Rio Grande do Sul and other states is that not all local judiciaries were strong. Where courts were weak, e.g., Maranhão, judges relished the idea of a national institution they could call upon to hold their local institutions accountable.

constrained by budgetary reductions or a national reform that imposed external mechanisms of accountability generated tensions between the courts and the proponents of said restrictions – the PT. The experience of the courts and the political left in Rio Grande do Sul is critical because it signals differences in the left’s attitude toward the judiciary and, conversely, in judicial attitudes toward the left, depending on the condition of the courts, the timing of the PT’s arrival in office, and the sequence of reform efforts. Indeed, these three factors may operate as a sort of critical juncture at the local level. If the left arrives at a time when the court is weak, the judiciary may develop a positive relationship with the left. However, if the timing of the left’s arrival in office coincides with a more “advanced” stage of judicial strength, the tone of the left’s relationship with the judiciary may be acrimonious. Similarly, if politicians initiate a reform effort where courts are weak, judges may be receptive, but if politicians initiate a reform where courts are strong or becoming strong on their own, there may be tension. Importantly, even in Rio Grande do Sul, the left favors strong judicial institutions – transparent, accessible, and effective courts that provide a quality service to the population. The adversarial relationship between the left and the courts emerged primarily with regard to judicial spending and an independent agency of accountability.

7.3.3. Courts in Authoritarian Enclaves

Despite the bleak judicial landscape in Maranhão, there are four promising sources of change that gained expression after 2002: (1) the local judges’ association (AMMA); (2) the local chapter of the national lawyers’ association (OAB-MA); (3) the union of employees from both the courts and the public prosecutor’s office (SINDJUMP); and (4) two leftist legislators – the single PT deputy in the local congress, Dep. Helena Barros Heluy, and a

PCdoB deputy in the federal congress, Dep. Flavio Dino. These four forces help us to understand the condition of the courts in Maranhão prior to 2002, even if only for the fact that these forces have begun to exert meaningful influence very recently. Each of these actors has brought at least one legal action before the national judicial council (CNJ), and the details of the litigation also help us understand the status quo of the courts. Further, their efforts are remarkable because there appears to be nothing else pushing the judiciary in a positive direction, either from other politicians or from the judicial leadership itself. Also, the results of their efforts were only just beginning to show in 2008 and early 2009. Moreover, from an analytic standpoint, these influences are compelling because they overlap with the causal mechanisms identified in Acre and Rio Grande do Sul – lobbying from within the judiciary by judges’ association (AMMA), and sympathetic support from external actors on the left of the ideological spectrum in the form of the PT and PCdoB. The OAB activities do not map well onto the forces in other states, but are a compelling new complement to consider in additional states, and resonate with the democratizing influence the national lawyers’ association had at the national level in the 1980s.

Finally, a crucial component of the causal mechanisms of change in Maranhão is the extent to which these four forces – AMMA, OAB-MA, SINDJUMP, and the PT and PCdoB legislators – leverage the influence of national institutions, specifically the CNJ, to draw attention to the condition of the judiciary in Maranhão. That is, these actors *exit the state and move to another level of the regime* – the national level – in order to promote judicial change back at the local level. This use of national agencies and institutions by local actors signals the poverty and passivity of local resources for change, but also coincides with the link between local actors and the national AMB in Acre in 2003, highlighting the way in which the particular design of Brazil’s judicial federalism shapes the logic of change. Theoretically, this process resonates with Snyder’s (2001a; 2001b) attention to the way actors at different

levels of a regime interact to shape policy outcomes, and with a domestic version of Keck and Sikkink's (1998) policy boomerang.

Among these influences, the AMMA took a critical leadership role in effecting change, a role that has sometimes been risky and even dangerous, highlighting the resilience of patterns of authoritarianism and traditional politics within Brazil.¹⁶⁷ The AMMA was originally a politically benign group that focused most of its energy on social activities among judicial colleagues. Notably, the group never challenged the poverty of conditions in the courts, the poor functioning of courts, or the drain on financial resources at the top of the judicial hierarchy. However, beginning in 2001-2002, a small group of progressive judges – led principally by lower-court, first-instance judges Rolando Maciel and Gervasio dos Santos – began organizing a candidacy for the leadership of AMMA. They canvassed neighborhoods and lobbied their colleagues, arguing for an administration of justice that was more democratic. Ultimately, they were successful in the internal elections of 2002, and Maciel became AMMA president. Under Maciel's leadership, the judges' organization began challenging the administration of the judiciary by the judges on the state's supreme court (Interview 160; 191).

This challenge coalesced in 2006, when the AMMA filed an administrative action with the CNJ – *Processo de Controle Administrativo*, or PCA¹⁶⁸ – challenging the legality of payments made to personnel within the judiciary and requesting a review of the judiciary's finances and payroll between 2005 and 2008 (PCA 255). This legal action taken by the AMMA became the central mechanism of accountability between 2006 and 2008, as other

¹⁶⁷ AMMA leadership received threats at the height of some of the actions described herein, including threats to the safety of their family members (Interview 160; Interview 191).

¹⁶⁸ PCAs are one of several oversight procedures available at the CNJ. The CNJ's regulations allow for other mechanisms, including PAD (*Processo Administrativo Disciplinar*), PP (*Pedido de Providências*), and Inspection (*Inspeção*). The disciplinary measures available under each of these vary, but in both PCAs and PADs, the CNJ has the power to remove judges from office and forward proceedings to the local and federal public prosecutors for criminal actions (*Regimento Interno do CNJ*, art. 75, para. 2; art. 95, sec. III; and art. 105; see, e.g., PCA 255).

actions initiated by the OAB and SINDJUMP were joined to the process of deciding *PCA 255*, and both the PT and PCdoB legislators lobbied in favor of these actions and expressed public support for the AMMA and the CNJ's activities (Dino 2007; *Jornal Pequeno* 2007; Barros Heluy 2009). Ultimately, *PCA 255* also led to the CNJ's own actions, including *PCA 439* (initiated 2007) and an inspection in Maranhão in October and November of 2008 discussed below (CNJ *Portaria 83/2008*).

Decided on June 25, 2008, nearly two years after it was originally filed (Sept. 13, 2006) *PCA 255* included a financial review (*auditoria*) by a team of four accountants from the TCU that spent 40 days in Maranhão (*PCA 255 Acordão*, 5-6).¹⁶⁹ In its decision, the CNJ determined that between January 2005 and April 2008 the TJMA had misused funds totaling 90,550,059.80 *reais*, which at the time translated to approximately \$43 million USD.¹⁷⁰ Among the more egregious financial actions noted by the CNJ, were payments to the wife of the TJMA president,¹⁷¹ and payments for 224 employees who were no longer active or never actually worked at the court. This last group of employees included more than 200 who were ordered dismissed by the CNJ in 2005 due to nepotism, including the wife of the President of the TJMA in 2006, Raimundo Liciano de Carvalho, who continued working at the court as of the date of the decision (June 25, 2008) (*PCA 255 Acordão*, 7, 47; *CNJ Resolução 07/2005*). Also among the highlights of this decision were (i) the criticism of the large number of discretionary employees (CCs), of which only a small portion (19.9%) were filled with personnel from civil service streams, in

¹⁶⁹ The CNJ has an agreement with the TCU that allows the two institutions to work together. In cases like this one (*PCA 255*), the CNJ is able to rely on the technical expertise of TCU staff to conduct audits and reviews of court finances (*CNJ Convênio 1/2007*).

¹⁷⁰ The average exchange rate between January 1, 2005 and April 30, 2008, was of 2.12 reais to the dollar (2.12:1). The real lost as much as 40% of its value against the dollar after the global economic crisis began to manifest itself in the latter part of 2008 (Oanda 2009).

¹⁷¹ Iná Nascimento Silva de Carvalho, wife of Raymundo Liciano de Carvalho.

direct violation of local and national constitutions (*Acordão*, 8), and (ii) the TJ's upward adjustments of salaries, especially salary ceilings, by way of internal regulatory changes, rather than by legislation in the local congress, again in violation of national and local laws (*Acordão*, 14). The CNJ counselor, Felipe Locke Cavalcanti, ended his decision by congratulating the AMMA for its courage and persistence in drawing attention to these matters, and summarized the present obligations of the TJMA to stop hiring illegally, stop illegal payments, return money paid illegally, and remove the wife of the former President from her position (as previously directed in 2005) (*PCA 255 Acordão*, 50-51). Further, Cavalcanti forwarded his decision to Maranhão's public prosecutor's office (Ministério Público), attorney general (Procurador Geral do Estado), legislature (ALMA, for consideration of action at TCE), and to the federal attorney general (Procurador Geral da República).

Complementing the AMMA's efforts, two legislators have supported judicial strengthening in Maranhão: local deputy Helena Barros Heluy (PT), and federal deputy Flávio Dino (PCdoB). Both Barros Heluy and Dino contribute deep understandings of the needs of the judiciary. Barros Heluy was an attorney herself, a public prosecutor, law professor, and as of 2007 three of her children were judges in Maranhão (Interview 152; Interview 160; Interview 191; ALMA [n.d.]). One judge described Barros Heluy as the only local legislator with a serious commitment to reform the judiciary (Interview 160). Similarly, Dino was an attorney, a federal judge, president of the national association of federal judges (AJUFE), also a law professor, and was secretary-general of the CNJ before running for political office (Dino n.d.). Thus, both Barros and Dino are first "internal players" and later "external players" drawing from their professional pride and ideological commitments in seeking to improve the conditions of the judiciary.

Barros Heluy has also initiated litigation that, though not aimed directly at the courts in the way that AMMA's PCA 255 was, have helped check the excesses of the political branches and generated a larger opening for actions like those pursued by the AMMA, as well as the OAB and SINDJUMP discussed below. Both suits filed by Barros Heluy were against governors. The first suit challenged Governor Roseana Sarney's act of putting her name on the state's accounting court (*Tribunal de Contas do Estado*, or TCE) (*Ação Popular in Vara de Fazenda Pública*, initiated Dec. 16, 2002).¹⁷² The second suit challenged Governor José Reinaldo Tavares act in his last year in office of granting ex-governors a lifetime pension; that is, he was establishing a benefit from which he would gain immediately in the following year (this was still in litigation in late 2007, see, e.g., *Recursos Especiais 17.536/2007 and 17.538/2007*, initiated by Jose Reinaldo Carneiro Tavares) ((1) *Ação Popular (Processo 5975/2003)* (initiated April 7, 2003).

Both episodes are revealing of traditional politics in Maranhão, and Brazil more generally. However, the first episode is particularly relevant to the judiciary because the actions before the CNJ were forwarded to, among other institutions, the TCE in Maranhão. For example, the TCE is supposed to review the CNJ's decision in PCA 255 and determine whether and how the judiciary should be disciplined or prosecuted. Thus, the fact that the former governor and sitting federal senator, Roseana Sarney Murad – who as of April 17, 2009, returned as governor of Maranhão after the impeachment of the sitting governor – placed her name on the principal auditing authority of the state, officially naming the court, “Palacio Governadora Roseana Sarney Murad”. When Barros Heluy initiated the litigation to challenge this act, the state legislature – dominated by Sarney's allies, passed a constitutional reform (with the requisite supermajority of votes)

¹⁷² This case was still being litigated as of December 2008 (see Gonçalves 2008).

to alter the relevant article so that the court's new name would not be patently unconstitutional (*Emenda Constitucional*, or EC 36/2003). In spite of the relatively clear legal issue at stake, the case remained in litigation as of December 2008, six years later, and Roseana Sarney's name remains on the court. In short, there is ample reason to be cynical and expect that the TCE will not do much to hold the TJ or the political branches accountable since these institutions are populated by the same traditional, powerful families. This cynicism is especially justified now that, as of April 17, 2009, Roseana Sarney was returning to govern Maranhão.

Further complementing the AMMA's actions since 2002, the local chapter of the national lawyers' association, the OAB-MA, filed another legal complaint with the CNJ on July 5, 2006, approximately two months before the AMMA filed PCA 255. The OAB's action, PCA 175, alleged improprieties in the contract between the TJMA and one of Brazil's largest banks, Banco do Brasil (BdoB). According to the contract, BdoB was going to handle the judiciary's payroll, as well as all deposits from litigation (e.g., fines, fees, and liens collected by the courts). Initially, the TJMA justified the relationship, saying that BdoB was also helping the judiciary finance the acquisition of materials and supplies, including computers and information technology. However, after the CNJ began reviewing the OAB's action, the TJMA's own in-house counsel (*assessoria jurídica*) recommended cancelling the contract due to the legal issues involved, and the TJ did just that on November 20, 2006. On April 18, 2007, the CNJ joined this action to AMMA's action, PCA 255, as well as another action (PP 1349, discussed below). Ultimately, the TCU's review of the TJMA's finances under PCA 255 helped establish the facts for this action, though the point was moot since the contract had already been cancelled.

Finally, the union of court employees and personnel from the public prosecutor's

office (*Sindicato dos Servidores da Justiça e do Ministério Público*, or SINDJUMP) also filed a legal action against the TJMA. This action (*Pedido de Providências* 1349, or PP 1349) noted irregular payments to a court employee in the amount of approximately 30,000 USD. This case was also joined to PCA 255 so that the TCU's review of TJMA's finances could also establish the facts for this case. As noted in PCA 255, the claims of SINDJUMP in PP 1349 were supported.

Despite the challenges of pursuing PCA 255, the AMMA pressed for judicial improvements on other fronts, as well. The judges' association never organized a strike or other labor action, as was the case in both Acre and Rio Grande do Sul, but it did mobilize 100 first-instance judges in 2007 to appear at the TJ in a show of support for more transparency and changes to the institution (Interview 191). The AMMA also publicized its activities, drawing attention to shortcomings in the administration of the courts and other judicial matters.¹⁷³ As late as April 2, 2009, AMMA was playing a key role in amplifying the resources of courts and in constraining the power of the TJ. Regarding resources, AMMA President Gervasio Santos, Maciel's successor, and other AMMA staff directly lobbied the state legislature in order to help pass legislation on March 25, 2009, that added 16 new substitute judges in the state capital. This measure helped reduce the workload of several judges, including at least two judges who were responsible for multiple courtrooms (two and three, respectively) (*AMMA Noticias* 2009c; 2009d). Regarding new efforts to constrain the TJ, AMMA was very publicly opposed to irregularities in the civil service exam for open judgeships (*AMMA Noticias* 2009e). Thus, the AMMA has been a central force for positive judicial change.

Importantly, the AMMA judges have only recently become this active in the local

¹⁷³ The AMMA's electronic newsletter (*AMMA Noticias*) and website (www.amma.com.br) were active with regular announcements and media releases as early as 2006.

politics of judicial reform. As noted in interviews, two distinct camps of judges developed within the AMMA since the early 1990s: (i) a conservative group aligned with the traditional, TJ elites, and (ii) a younger group with a more progressive vision (“*visão progressista*”), seeking improvements in the administration and transparency of the courts based, in part, on an idealistic vision inspired by democratization, the 1988 constitution (Interview 160), and progressive movements in other parts of the country. With regards to these movements in other regions, the “alternative law” (*direito alternativo*) movement, which was strongest in Rio Grande do Sul and was very influential in shaping the minds of young judges in that state, as well as in states like Maranhão (Interview 152; Barros Heluy 2006; see also Engelmann 2007).¹⁷⁴ The former, conservative group had dominated until very recently, but the group led by Rolando Maciel and Gervásio Santos began pushing for greater openness in the late 1990s and in the early 2000s. Only in 2003, after the election of Maciel as president of the association, did the progressive group become an expressive majority, pushing PCA 255 to the CNJ struggling in the ways mentioned above against the heretofore unchallenged opacity of the TJMA (*AMMA Notícias* 2007). Among judges, Maciel has the kind of folk-hero status that Adair Longuini or Arquilau de Melo Melo have in Acre, maintaining pressure on the judiciary to open despite threats to his person and family (Interview 160; 191). Gervásio Santos succeeded Maciel beginning January of 2007, giving continuity to this progressive cadre, and the same group, again led by Santos, won another two-year administration on December 12, 2008 (*AMMA Notícias* 2008b). Thus, a progressive group within the judiciary has gained prominence and leadership since 2003, and has actively been challenging the traditional, hierarchical, opaque, and weak judicial structure of the state.

¹⁷⁴ Gaining prominence in the 1980s, *direito alternativo* was a judicial philosophy that prioritized substantive concerns about justice and equity in deciding litigation rather than procedurally correct and formally legal decisions that led to unjust results. Given that the movement is broadly concerned with contextual economic factors and social justice, some observers draw connections between “alternative law” and Marxism. The analog of “alternative law” in the U.S. is the “critical legal studies” (CLS) movement.

CNJ Boomerang

The various actions of the AMMA, OAB-MA, SINDJUMP, and Dep. Helena Barros Heluy were effective in so far as the CNJ eventually initiated its own action – PCA 439 – and an inspection of Maranhão’s courts on October 22-25 and November 21-22, 2008 (CNJ Portaria 83/2008). First, PCA 439 (initiated February 2, 2007) was activated by the CNJ itself (*de oficio*) following CNJ Resolutions 13 and 14 (March 21, 2006), which set salary ceilings for the judiciary at all levels and directed state TJs to inform the CNJ of the salary structure in each state. Noting irregularities in the salary structure of Maranhão’s judiciary, PCA 439 was born (see “Voto Vencido” of Feb 7, 2007 for clearest statement of rationale). Despite the CNJ’s stated motivation for PCA 439, it is reasonable to infer that the previous actions also motivated the administrative body. The complaints discussed above had already reached the CNJ. Specifically, two complaints reached the CNJ in 2006 – PCA 175 and PCA 255 – both of which cited financial irregularities, and PCA 255 identified multiple irregularities related to salaries and extralegal payments. Thus, a reasonable conclusion is that Maranhão’s judiciary already had the CNJ’s attention prior to February 2007 when the Council decided to take a closer look at salary ceilings in Maranhão. Indeed, the final decision of PCA 255 congratulates AMMA for its courage in raising the case of abuses within the TJMA in the first place (PCA 255 *Acórdão*, 50). That is, the counselors at the CNJ noticed that it was judges themselves who were complaining about courts in Maranhão, which is another signal that this case quickly raised Maranhão’s profile at the CNJ.

A second example of a “boomerang” with stronger effects was the CNJ’s inspection of Maranhão’s courts in 2008. Citing several worrisome signs from Maranhão – including the large number of unattended cases, the growing backlog of cases, and the total absence of any disciplinary or corrective measures by the local judiciary – the inspection took place between October 22 and 25 and November 21 and 22 (CNJ Portaria 83/2008; CNJ *Inspeção* –

Relatório 2009). Despite the fact that none of the previous complaints were cited formally as motivations for the inspection, it is again reasonable to conclude that the prior actions played a meaningful part. The sequence of events and the timing of the inspection strongly suggest that all the previous complaints, especially those from the local associations of judges (AMMA) and lawyers (OAB-MA) played a prominent role in motivating the CNJ to examine the inner workings of Maranhão’s judiciary.

The CNJ’s inspection (*inspeção preventiva*) was harshly critical of Maranhão’s courts. Among its findings were the following highlights: (i) the excessive number of discretionary employees (*cargos em comissão*, or CCs) criticized in earlier decisions (see PCA 255) were still employed, generating expenses in just the offices of the 24 desembargadores of R\$2.5 million *per month* (\$1.25 million US, or about \$50,000 per judge per month); (ii) a large number of payments to inactive employees or “ghost employees” (*servidores fantasma*)¹⁷⁵, which were also criticized in PCA 255; (iii) a large number of judicial orders remained unexecuted, among which at least 4,000 were found in storage in no apparent order (i.e., not sorted by date or priority), and the storage area had been organized only one week earlier, i.e., after the CNJ announced it would be conducting its inspection; (iv) extraordinarily excessive and unsupervised per diems (initially R\$2000 reais (\$1000 USD), but lowered to \$1000 reais (\$500 USD)); and (v) the use of 144 officers of the military police used to guard the private homes of *desembargadores* (*CNJ Inspeção – Relatório*). While it remains to be seen whether the CNJ will be able to enforce its decisions in Maranhão, the political logic that once facilitated or even promoted a weak, patrimonial judiciary has changed. The CNJ has been an effective “federal foothold” for

¹⁷⁵ This phenomenon of *servidores fantasma* in Brazil is similar to the phenomenon of *voladores*, or “fliers” in Mexico – individuals who are listed as employees and who collect a salary, but who never actually perform any work.

local reformists – internal and external – to leverage the attention and political influence of national institutions.

In this regard, many local judges feel vindicated for their support of the national reform of 2004 that created the CNJ. For instance, Ronaldo Maciel, AMMA president from 2003-2006, was one of only three presidents of local judges' associations who lobbied his judicial colleagues in 2003-2004 in favor of an organ of external accountability like the CNJ (*controle externo*). In general, the judicial community was against external supervision of their institution (Sadek 2001). As AMMA president, Maciel attended meetings of the national judges' association (AMB) alongside his colleagues from all 27 states (including the federal district). However, Maciel was one of only three association presidents (along with his equals from Ceará and Pernambuco) who supported the creation of the CNJ. Indeed, in an interview, Maciel recalled a confrontation with the president of the judges' association from Rio Grande do Sul (AJURIS), who had been criticizing the CNJ as an affront to judicial independence and an invasion of the judicial branch by the political branches. Maciel responded that the opposition to the CNJ in Rio Grande do Sul was understandable, since that state already had a strong and functional judiciary. However, even if the CNJ did restrict a portion of the state's administrative autonomy, the judiciary would remain a strong institution. As phrased by Maciel at the time, Rio Grande do Sul was upset because they were being asked to switch "from a Ferrari to a Mercedes". He asked his colleagues to consider that, in Maranhão, they were still "inventing the wheel".¹⁷⁶

¹⁷⁶ Author's translation. Original Portuguese: "vocês estão mudando de Ferrari para Mercedes; no Maranhão estamos inventando a roda." After giving this speech at the AMB, Maciel recalled that the president of the judges' association of Ceará, Michel Pinheiro, approached him and welcomed Maciel to the "losing side", referring to the generalized opposition to the CNJ within the AMB leadership ("bem-

6.4. Causal Logics

Having traced the process of key moments of judicial change in three Brazilian states, I now turn to a more focused assessment of the underlying causal logics. Specifically, I seek to adjudicate among the competing and contradictory causal logics that undergird expectations associated with electoral competition, and to identify the causal logic underlying the association between party identity and change. Overall, this portion of the analysis seeks to refine the causal account of judicial change, finding the right causal place for external and internal influences.

First, the re-election logic is not supported. In both Acre and Rio Grande do Sul, the policies toward the judiciary were not packaged as any kind of “best practice” or “best policy” for the sake of re-election. Rather, it was the association of first-instance judges in Acre (ASMAC) and both first-instance judges and the judicial leadership in Rio Grande do Sul that raised the issues of judicial spending and autonomy. Additionally, the timing and sequence of the two crucial moments of judicial change in Acre do not support the re-election logic since both moments occurred *after* elections. The first budgetary increase in 2000 came after the PT had won office and almost two years before the next gubernatorial elections. This timing undermines any strong claim that the new PT governor (Viana) conceded to ASMAC’s demands in late 2000 in order to be re-elected in late 2002. However, many of the demands required fulfillment throughout 2001 and even 2002, so while there is no clear evidence of re-election motives, the possibility that Viana was maximizing his electoral chances cannot be dismissed entirely. Similarly, the strike in 2003 came after Viana was re-elected in 2002, in the first year of

vindo ao grupo do voto vencido”).

his second and final term. Moreover, Viana had not moved on his budgetary proposals for the judiciary during 2002, which was the relevant electoral year for the re-election logic. If this logic were correct, Viana should have been very flexible during 2002, which he was not. It is reasonable to infer that he had a larger stake in resolving the first strike – given that he would soon be campaigning for re-election – and that he did not face similar electoral pressures in mid-2003. Nonetheless, he would have still wanted his party to win the 2006 elections, so he would have faced similar electoral incentives in order to maximize his party’s success. In any case, there is no clear evidence that Viana was pursuing judicial change as a kind of “best policy” for the sake of appealing to the electorate.

In Rio Grande do Sul, Alceu Collares had already won his election in 1990 and was in the first half of his administration when he began supporting Púperi’s and Barison’s projects of judicial autonomy and a more substantial budget. Thus, as was the case in Acre, Collares did not make judicial reform a campaign priority, but promotes the strengthening of the court *after* being elected. Finally, in Maranhão, the historically low levels of electoral competitiveness and the persistence of traditional politics would not lead us to anticipate a re-election logic to motivate politicians to propose policies of judicial change. Indeed, the only local politician to voice consistent and public support for improving the administration of justice was the PT legislator, Barros Heluy.

The evidence also disfavors the insurance logic of Ginsburg and Finkel. This logic highlights the electoral uncertainty of sitting administrations, requiring that present majorities (i) anticipate an imminent electoral loss, and (ii) strengthen the courts in an effort to protect themselves as future minorities. That is, expecting to soon be out of

office, current majorities strengthen the third branch of government in order to “self-protect” against incoming majorities, accepting the short-term costs of reduced power in exchange for the long-term benefits of political safety (Finkel 2001; 2008; Ginsburg 2003).

This is not the case in Acre, Rio Grande do Sul, or Maranhão, where the timing and sequence of change cut against the insurance logic. In Acre, the PT was in the middle of a historic first administration in the state (1999-2002), judicial strengthening began in 2000-2001, the restrictions on running for re-election had been lifted in 1997, and there were strong indications that the PT would win a second term in the October 2002 elections.¹⁷⁷ In Rio Grande do Sul, Collares had just entered office in 1991. Though he would not be able to run for re-election in 1994, making it more likely that he would be a future minority again (as he was from 1982-1990), he should be strengthening the courts on his way out of office, not at the beginning, which would actually restrain his own power. That is, an executive should give away power to another institution when she will no longer be needing or using that power, and in order to keep it from her adversaries who are about to enter office, not when the administration is just starting and will have to co-habit with a strong judicial branch for at least a full term.

Further undercutting the insurance logic, the events in Acre and Rio Grande do Sul ask us to consider why the previous administrations in each state did not strengthen courts. That is, prior to the PT victory in Acre, why did the previous PMDB

¹⁷⁷ Viana did win a second term, but this kind of ex-post evidence should not be used to support or undercut theoretical expectations. For similar reasons, skepticism could be expressed regarding ex-post arguments in other contexts, e.g., Mexico’s national judicial reform in 1994, where there is a risky temptation to point to the PRI-to-PAN transition in 2000 as proof of the PRI’s motivations in 1994, a full six years before the transition. For arguments in support of an insurance explanation in this context, see Ginsburg (2003) and Finkel (2005; 2008). For more skeptical positions, see Inclán (2006), Magaloni (2008), and Ríos-Figueroa (2007).

administration not strengthen courts? Further back, why did the previous PDS administration not strengthen courts before the PMDB's victory? Similarly, prior to Collares's PDT administration in Rio Grande do Sul, why did the PMDB or PDS administrations not strengthen the courts? The judiciary was a prominent part of the constitutional debates of 1988 and 1989, and a national debate regarding judicial reform maintained a high profile since 1992, following a reform project initially proposed by the PT (Sadek 2001). The actions by leftist parties in government and the lack of action by other governing parties suggest ideology trumps insurance.¹⁷⁸

Maranhão offers a kind of crucial case for the insurance logic, much like the case of Hidalgo in Mexico. Maranhão's political elites had the single-veto-player environment in which to at least start improving the judiciary, but they did not do so. Indeed, following the insurance logic, these elites (current majorities) had been in power for a long time, so the risks to them if they were to lose power (future minorities) were high. Moreover, the PDT's recent win in the governor's race of 2006 could be read as suggesting there was electoral uncertainty in the preceding years. However, interviews indicate there is little distance between the PFL/DEM majorities and the PDT, highlighting that the PDT governor, Jackson Lago, was part of previous PFL administrations and that Lago and other dominant politicians "all belong to the same group", namely the coalitions built around the Sarneys (Interview 152).¹⁷⁹ In addition, the actions brought before the CNJ, and the decisions of the CNJ itself, had provided ample

¹⁷⁸ Thanks to Bill Stanley for suggesting this phrasing.

¹⁷⁹ A compelling example of the kind of "choreographed opposition" in Maranhão occurred in 2006, when Roseana Sarney Murad's brother-in-law, Ricardo Murad, wanted to run for governor. He was legally barred from doing so because of his close family ties with Roseana, so he set out to distance himself from his brother's wife in awkward, contrived, public statements about how opposed he had always been to her (*Correio Braziliense* 2002). In any case, the recent events in Maranhão – the PDT victory in October of 2006 and Roseana Sarney's success in impeaching Lago and having the TSE place her, as the runner-up, back in the governor's office – suggest that the configurations of power may be shifting.

evidence of specific problems in the judiciary, and had even ordered specific changes. Despite all these factors, nothing changed. Indeed, even as Roseana Sarney returned as governor of Maranhão on April 17, 2009, bringing the PFL back to the executive, the CNJ's orders remain disobeyed and unenforced.

Rather than supporting an insurance logic, the evidence in Maranhão supports a logic of entrenchment that is reminiscent of Hirschl's (2004) "hegemonic preservation" thesis. However, the entrenchment in Maranhão, much like that in the Mexican state of Hidalgo, differs from Hirschl's thesis in two important ways: (1) it is not ideological, and (2) it does not result in any actual strengthening of the courts. Unlike the individualistic and neoliberal ideology that motivated Hirschl's elites, the elites in Maranhão are simply trying to remain in power and in control of the sources of patronage. This is most apparent in the incidents of corruption mentioned in the disciplinary processes before the CNJ, including nepotism, "ghost employees", extraordinary per diems, and using the military police to guard the residences of judicial elders. Additionally, unlike Hirschl's elites who actually strengthen courts in order to insulate their neoliberal policies within these non-majoritarian institutions, the elites in Maranhão are not strengthening the judiciary in any way. Rather, they are preserving their own, narrower networks of privilege and patronage. Given these differences, the entrenchment in Maranhão is of a much balder variety than the strategic policy insulation argued by Hirschl, motivated more by a desire to maintain control of patron-client networks in order to perpetuate the non-ideological clientelist and patrimonial relations that have characterized relations of power in the state for so long. Thus, unlike the insurance logic or even Hirschl's neoliberal entrenchment or insulation, the evidence indicates Maranhão's elites have

tightened their grip on local institutions rather than resort to the subtle, longer-term, sophisticated and anticipatory strategy of strengthening courts to provide any kind of protection, insulation, or institutional “lock-in” for their policies. Notably, Hirschl’s thesis is based on the analysis of four advanced democracies – his “near-ideal” case is Israel’s reform of 1992 (Hirschl, 50) – so the evidence in Maranhão (and Hidalgo) suggests that a different kind of entrenchment may work in newer democracies.

The signaling logic also receives no clear support. According to this logic, current majorities that anticipate *remaining in power*, but need the support of minorities to govern effectively, strengthen courts as a signal of their respect for the rights of the minorities in order to gain their support. This is not the case in either Acre or Rio Grande do Sul – the two cases of actual strengthening – and there is no sign of this even beginning to happen in Maranhão.

The veto-player logic, however, does receive support. The clearest evidence is from Rio Grande do Sul. As early as 1989, when Gomes Nunes challenged budgetary reductions by the executive, the judiciary effectively leveraged the legislature to act as a veto point on the executive. Moreover, during the PT’s first state-level administration (1999-2002), the executive tried to check the judiciary’s spending, but the judiciary was again able to challenge the reduction. Also, in 2007 the new PSDB governor, Yeda Crussius, engaged the judiciary in a very public and bitter battle over the court budget for 2008. The TJRS went as far as the nation’s high constitutional court (STF) in order to challenge the governor.

Importantly, the motives of the three attacks on judicial budgets in Rio Grande do Sul – by the PMDB in 1989, the PT in 2001, and the PSDB in 2007 – were not the same,

generating different possibilities for resolution and a different range of outcomes. Thus, while there is support for the veto-player logic, the logic provides information about *when* we might expect policy change, but gives no information about preferences or motives, i.e., the content of policies or the direction of change. Even the logic's capacity to predict the timing of change is undermined by the example from 1991-1992, when Collares strengthens the court under effectively the same number of veto players as when the executive attacked the judicial budget in 1989. Further complicating the logic, in Maranhão, the non-competitive, single-veto environment should have made it easy for the political branches to effect change, but reform does not happen. Thus, even where we expect the logic to anticipate the timing of change, it fails because of the absence of information regarding preferences and motives. In short, beyond the number of relevant actors, the information regarding the motives, preferences, or the ideological identity of relevant actors is crucial for anticipating both the timing and the content or direction of reform.

In contrast to the weak or mixed evidence regarding most of the causal logics underpinning electoral competition, there is strong support for the causal role of ideology. In this regard, three types of evidence are particularly useful: (1) the nature and extent of change when change is easiest to accomplish; (2) the degree of effort to bring about change when it is very difficult to carry out, i.e., persistence when confronted with significant obstacles; and (3) instances in which actors pursue positive change that is against their own narrow, material self-interest.

The fact that the PFL/DEM in Maranhão did not promote change when it was easiest for them to do so speaks to the first type of evidence. That is, the PFL/DEM failed

to improve the judiciary during its long, single-veto-player tenure in government. This was strategically the easiest environment in which to effect change, but the status quo remained. Indeed, the judiciary continued to deteriorate. This evidence cuts against any conclusion that the PFL/DEM in Maranhão systematically or programmatically supported strong courts. Rather, the evidence supports the conclusion that the PFL/DEM is a clientelist party marked by persistent patronage-based politics and patrimonialism, a dynamic that has penetrated and corroded the judiciary.

The actors that have pushed for change in Maranhão – the AMMA, Barros Heluy, the OAB-MA, and the union of court employees – have done so under very difficult circumstances and, in some cases, at considerable risk. This persistence in the face of substantial obstacles speaks to the second type of evidence. Moreover, progressive judges and other “operators of the law” (*operadores do direito*) have found sympathetic support in local PT and federal PCdoB legislators. This is not to say that lofty idealism has been a root cause of efforts to change the status quo. Rather, an analytically conservative conclusion is that progressive, democratizing currents within the judiciary (internal influences) have risked substantial costs in order to improve local courts, and their efforts have resonated with left-of-center politicians (external influences) who have been pushing for a closer approximation between democratic theory and democratic practice. At the very least, this signals the important role of ideas in shaping reform efforts. That is, from at least the judges’ perspective, attitudes, values and other cultural-ideational factors override narrow considerations of material self-interest.

In Acre, a similar pattern emerges, though there is a much stronger political presence of the left and greater interaction between internal and external pressures. The

strongest improvements have been initiated, facilitated, or approved by actors within the PT or actors sympathetic to the PT, including Des. Arquilau de Melo Melo, who was a founding member of the PT before becoming a judge.

Finally, in Rio Grande do Sul, governor Collares gave up a portion of executive power during his own administration, transferring this power to the judiciary. Along with Viana's actions to strengthen the courts in Acre, this speaks to the third kind of evidence – actions that are not easily explained by referring to material self-interest. Rather, the evidence supports the role of ideology and ideas about the proper institutional configuration in a democracy. Why did Collares grant autonomy to the TJ? If a central insight of existing research in public law and judicial politics is that politicians seek to constrain courts, bending them to their political will, then why would a sitting governor do the opposite early in his term, effectively limiting or constraining his own power and influence? In this regard, the phrase of an interview cited earlier is illustrative, “there was friendship, but there was also ideological will”. Indeed, this phrase resonates with a statement from Acre, “first we were friends, then we were institutions.” Notably, while these phrases highlight friendship over partisanship, the evidence suggest the complementary causal prominence of friendship and a reformist ideology.¹⁸⁰

6.5. Conclusion

In sum, the entrenchment and veto player logics are the only causal logics

¹⁸⁰ Judges in Rio Grande do Sul seemed to acknowledge similar phrases in their understanding of the success of judicial autonomy in Minas Gerais due to friendship between the executive and judicial leadership and its failure in Paraná due to the absence of this friendship. The evidence suggests the success of reform projects depends on more than just friendship. For instance, judges and political elites in Maranhão are, in all likelihood, close acquaintances if not good friends, yet there is no meaningful reform project forthcoming.

underlying electoral competition that receive empirical support. Notably, as competition increases both of these logics can have negative consequences. Also, the veto player logic is often neglected in existing analyses of electoral competition, and the entrenchment logic presented here is non-ideological and corrosive, unlike Hirschl's neoliberal, positive, "hegemonic preservation" thesis. The results here suggest both of these logics deserve greater attention in studies of the consequences of electoral competition, especially in new democracies transitioning from non-competitive authoritarian baselines.

With regard to ideology, the findings suggest the left supports judicial strengthening more than its centrist or rightist counterparts. However, the effect of the left is mediated by the baseline condition of courts, as well as the timing and sequence of reform efforts. Overall, we should expect stronger, more developed institutions *earlier* in the south and southeast of Brazil, and weaker, less developed, or late-developing institutions in the center, north, and northeast. Thus, the left should exert a positive effect throughout the country, even in the south and southeast, early on in the post-authoritarian phase (i.e., in the 1980s and early 1990s). This relationship should persist in the center, north, and northeast of the country. However, this effect should reverse after the 1990s – specifically after 1999 – in the south and southeast, becoming clearly negative in 2000s. This should be true specifically regarding judicial spending. More broadly, ideology should exert a strong effect in the south and southeast but a weak effect in other regions, given that politics in general is less institutionalized in these regions and more patrimonial and traditional.

The conditional nature of the relationship between the left and court strength

outlined above resonates nicely with the latter portion of the quantitative findings. That is, the essence of the discussion above is that the effect of ideology may be contingent on institutional factors. This is precisely the finding in Chapter 4. Initially, ideology did not seem to have a consistent relationship with spending, unlike the clear U-shaped relationship in the Mexican states. However, controlling for the institutionalization of local party systems (operationalized as electoral volatility), the same U-shaped relationship emerged in the Brazilian states. That finding was not as robust as it was in Mexico, but the result is consistent with the qualitative finding reported here – that the effect of ideology varies across the Brazilian states. Specifically, the effect of the left is conditioned by the strength of local judicial and party institutions.

The influence of ideology highlights the broader importance of the role of ideas in understanding judicial change. In this chapter, ideology is the clearest example of the manner in which ideas or cultural-ideational factors shape and motivate judicial change. However, there are other examples, as well. First, the very notion that judges can engage in labor actions – slowdowns, stoppages, and strikes – in order to pressure the judicial leadership or the political branches, has a cultural-ideational foundation. Although judicial strikes are often met with claims that they are illegal or unconstitutional (see footnote 114 in this chapter), the fact that they are widespread in Brazil contrasts starkly with Mexico, where judges have *never* gone on strike at any level of government. The fact that judicial strikes are not unusual in Portugal but that Spanish judges only struck for the first time in the post-Franco era in February of 2009 (*Público* 2009) suggests an avenue of research that explores the extent to which legal or constitutional culture influence the incidence of judicial strikes in Brazil relative to Mexico that is based in the

different colonial or constitutional legacies in each country. That is not to say that culture or colonial legacies determine the outcomes, but rather that the presence or absence of patterns of extrajudicial activity is suggestive of a different attitude towards this kind of conduct across the two constitutional cultures. A second example of the role of ideas is the progressive culture that developed among some judges in Rio Grande do Sul during the 1980s around “alternative law,” or the rights-consciousness the developed after the 1988 federal constitution. Indeed, both of these movements were explicitly cited as influential in the way reformist judges in Maranhão perceived their own role and the role of courts in a democracy. Finally, the new “culture of administration” promoted by the FGV’s MBA do Judiciário is another example of the role of ideas. Judges in Acre, for example, highlight the shift in professional attitudes and internal culture that have been wrought by participation in this program, forming a generation of judges attuned to the administrative needs of the courts and increasingly equipped with techniques to make their work faster and better. Importantly, the FGV’s program bears a close ideational proximity to the mission of the CNJ and the 2004 national reform. This should perhaps not be surprising, since the director of the FGV law school in Rio de Janeiro and the lead figure behind the MBA, Joaquim Falcão, was also one of the first counselors on the CNJ. In sum, the importance of ideology, judicial labor actions, “alternative law”, and the judicial MBA program highlight the role of ideas, which are generally underemphasized in the study of institutional change.

Lastly, the CNJ is itself a new and effective mechanism of policy change. Indeed, the evidence from Maranhão strongly supports the conclusion that the CNJ is fulfilling its promise of forging a “strong but politically accountable judiciary” (Garoupa and

Ginsburg 2009, 111-112). From the perspective of understanding causal mechanisms, the way local actors use the Council as a federal foothold from which to leverage national institutions to effect local change resonates as a domestic variant of Keck and Sikkink's policy boomerang. Moreover, the local-federal-local pattern of change answers Snyder's call for greater attention to the ways in which policies move across and are shaped by different levels of a regime. In this regard, the small-N analysis enhances our understanding of judicial change in the Brazilian states, and the evidence also yields insights into the process of policy change in large federal systems.

Part III. Conclusion

8. Conclusion

Crafting Courts in New Democracies

8.1. Origins of Strong State Courts in Mexico and Brazil

Drawing on the first time-series cross-section analyses of state courts in either Mexico and Brazil, as well as small-N, process-based research designs in each country, the results show electoral competition and ideology shape the strength of local courts. The large-N analyses are limited in their ability to distinguish between multiple causal logics undergirding electoral competition, but the small-N analyses are more suited to this task and adjudicate among complementary and competing logics. Moreover, the cases are explicitly “nested” within the large-N analysis, providing model-testing and model-building opportunities.

8.1.1. Opportunity Structures, Patronage Preservation, and Ideology in Mexico

In Mexico, the large-N analysis provides clear evidence that competition and leftist politicians benefit judicial strength, with weaker support for the proposition that rightist politicians improve courts, and a strong statement that the historically dominant PRI weakens courts. The positive relationship between competition measures does not identify specific causal logics, but the negative relationship between divided government and spending supports the veto player logic. The case studies provide what Lieberman (2005, 484) considers confirmatory evidence of the causal process underlying the model tested in the large-N analysis. Specifically, state courts in Mexico are strongest in Michoacán where electoral competition generated veto players, but leftist politicians and ideologically sympathetic, progressive judges sustained a reform effort for more than three years and eventually overcame the legislative veto point. Notably, the divided government generated by electoral competition was composed of a PRD governor with a

PRI legislature, and it was the PRI that blocked the PRD's reformist agenda from 2003 to 2005. The legislative elections in 2005, however, resulted in PRD gains and PRI losses, weakening the PRI's ability to veto. Combined with the active extrajudicial conduct in the form of lobbying in favor of the reform and drafting of a compelling reform agenda, the PRD and sympathetic judges succeeded in passing the reform, though in diluted form after negotiations with the PRI. Thus, Michoacán offers the kind of process-based evidence that confirms the findings of the large-N model and analysis.

In Aguascalientes, courts initially strengthen due to the initiatives of an outsider, reformist, PRI politician with a market-oriented ideology closer to the neoliberal wing of the PAN, but judicial elders from traditional elites later reverse these reforms during the PAN-aligned administration, negating many of the previous reforms. This result supports the expectation that right-wing ideologies favor reform, but suggests strong differences between (a) the neoliberal orientation of outsider PRI politicians and (b) the particular PANista brand of rightist ideology in Aguascalientes. Specifically, the dominant trend within the PAN in this state is not neoliberal; rather, the party in the state is dominated by Catholic conservative current of the PAN, which has long been strong in this central-western region of Mexico. The extent to which party ideology varies from one state to another, i.e., the PRI behaving like the economically liberal branch of the PAN, or the PAN expressing only its socially conservative current, may have important consequences for institutional change.

In PRI-dominated Hidalgo, reform has come late and in weak form, essentially amounting to superficial, cosmetic changes and the continuity of top-down, traditional PRI politics. This evidence is also consistent with the model, but highlights the

“patronage-preserving” logic that is also present in the Brazilian state of Maranhão. The extent to which this logic differs from the entrenchment logic of Hirschl (2004) and Gillman (2002; 2008) is addressed further below.

8.1.2. Opportunity Structures, Patronage Preservation, and Ideology in Brazil

In Brazil, the large-N analysis indicates divided government benefits courts, cutting against the veto player logic in Brazil and suggesting competition exerts a positive pressure. However, margin of victory has an unanticipated positive relationship with judicial spending, i.e., noncompetitive elections correlate with higher court budgets, contradicting the expected positive relationship between competition and court strength. Generally, center-left and centrist parties exert an upward pressure on courts. Among Brazilian parties, the PDT, PMDB, and early PSDB exert this pressure most consistently, and there is some evidence that the PFL also benefits courts, though only relative to PDS-legacy parties. Importantly, the model also finds right-wing, PDS-legacy parties weaken courts. Overall, among the reduced group of leftist and centrist Brazilian parties, the center-left PDT emerges as the most consistent promoter of court strength.

Again, the small-N research offers confirmatory evidence, as judicial strength is the strongest in the model-testing case of Rio Grande do Sul, which provides compelling evidence that the PDT administration of Alceu Collares granted critical financial and administrative autonomy to the judiciary largely for ideological reasons. However, while ideology was a key influence, Collares and the TJ president, José Barison, were also good friends, and it was the judicial leaders – first Puperi and then Barison – that pushed for reforms. Thus, judicial initiatives, coupled with friendship and ideological affinity between the court president and governor, shaped early gains in court strength. Despite

the apparent support of the judiciary by this center-left administration – support that led to a series of years in which the local courts grew in both institutional strength and legitimacy – a PT governor two administrations later (1999-2002) sought to reduce the judicial budget. This action was seen locally by judges as an invasion of the judiciary's autonomy, generating animosity between the judicial leadership and the PT.

In Acre, by contrast, the PT exerts a positive effect. Judges again pressured for policy change, primarily lower-level judges. The state judges' association organized a strike on the eve of a new administration by a senior judge, Alceu de Castro Melo, who had deep roots in the PT and would be sympathetic to the judges' demands. Moreover, Melo shared a close friendship and ideological affinity with the PT governor, Jorge Viana. Thus, once again, judicial mobilization coupled with friendship and ideological sympathies across the judicial and executive leadership shaped judicial change.

In Maranhão, as in Hidalgo in Mexico, the judiciary remains institutionally weak and opaque. Moreover, the leadership of the state courts – the “cupula” of state supreme court – continues to behave in unethical and illegal ways, evoking memories of corruption and mismanagement that many observers hoped were part of the distant past. Much of the problem appears to be in the “patronage-preserving” posture of traditional, conservative elites. In this state, however, as in other states, reformist initiatives have come from progressive first-instance judges who gained leadership positions within the state judges' association. These judges have leveraged national institutions, namely, the National Justice Council, to carry out change at the local level. It still remains to be seen whether this change will occur, but as in other states, the main sources of extra-institutional support have come from leftist politicians – a single, local legislator from the

PT and a single federal deputy from the PCdoB. The cases do not provide confirmatory evidence regarding the PMDB or PSDB, but they do support the negative relationship between PDS legacy parties and court strength.

Moreover, the case studies show the PT has different effects on court strength depending on the baseline condition of local party and judicial institutions, helping us understand why this party – commonly understood as the most programmatic in Brazil – does not have a statistically significant effect in the large-N analysis. Models that take into account the baseline strength of the judiciary at the time of reformist initiatives can help us understand the effect of ideology. The conditioning effect of party system institutionalization on the influence of ideology can also help in this regard, and helps explain the different results between Mexico and Brazil. Since the 1990s, Mexico has had a stable three-party system at the national level. Moreover, this party system is also stable subnationally. Thus, Mexico’s party system is highly structured, stable, and centralized, and ideological preferences map well onto this system, facilitating the expression of consistent ideological commitments. Conversely, Brazil’s national party system is highly unstable. Despite recent increases in stability, the number of parties and changing coalitions at the national level stand in stark contrast to the Mexican system.

Furthermore, the Brazilian party system is highly decentralized – state parties often reflect local, candidate-centered machines, oligarchic or family-based coalitions, and patronage-based or clientelist patterns. Parties that receive large shares of votes locally are often not represented nationally. Ultimately, ideological orientation does not map well onto this party structure, helping to explain some of the inconsistencies regarding the effect of ideology in the aggregate results in Brazil. Greater attention to the

operationalization of party system institutionalization will improve expectations regarding the effect of ideology.

Overall, the results in both Mexico and Brazil highlight the role of ideas. Within this realm of cultural-ideational factors, the left matters more than the center or the right, with progressive ideas regarding the role of courts in democratic societies motivating and exerting a meaningful and consistent influence on reform. Stated otherwise, institutional change has not been an unintended side effect of democracy, as suggested by some of the more mechanical logics underpinning electoral competition. Rather, actors intend to change institutions and work towards this end, often over long periods of time and despite obstacles and constraints.

However, agents of reform cannot express their intentions automatically, just as electoral competition does not have automatic effects. The expression of ideas is contingent upon the strategic terrain, including electoral conditions. Opportunity structures, alliances, and overlapping historical processes condition the effect of ideas. Among the historical processes identified in the preceding chapters, three are prominent: (i) the ideological legacies of authoritarianism, i.e., the extent to which the ideological location of the base of authoritarianism exerts persistent effects over time, specifically, the negative effect of the center in Mexico due to the PRI and the right in Brazil due to ARENA/PDS); (ii) the baseline condition of courts when the left arrives in power, i.e., weak courts welcome the reformist program of the left while strong courts reject this program (e.g., animosity between relatively autonomous judiciary and PT in Rio Grande do Sul contrasts sharply with the positive role of the PT in Acre and Maranhão); and (iii) ongoing processes at other levels of the regime, e.g., reform projects at the national level

in both Mexico and Brazil, or the cross-cutting national pension reform in Brazil in 2003. To these, we could also add the international movement of ideas regarding the role of courts in democracies, as evidenced by the movement of leftist or progressive ideas among Spanish-trained judges in Michoacán, or the movement of similar ideas among the “alternative law” community in Brazil. Ultimately, the results emphasize the role of ideas as well as the conditional expression of these ideas, that is, the *contingency of intentionality*.

8.2 Contributions

This study yields empirical, methodological, and theoretical contributions. Empirically, the data generated at the state level in Brazil and Mexico – including spending data as well as interview, archival, and observational evidence – contribute greater empirical depth to an underexamined area of judicial politics, subnational court strength in federal systems. Methodologically, the study contributes a demonstration of the case selection opportunities available in nesting cases within time-series cross-section data, and sheds light on how small-N, process-based analysis can at least partially neutralize concerns about the interdependence of observation in subnational research.

Theoretically, the analysis contributes finer specifications of causal logics undergirding electoral competition, and articulates theory-guided causal patterns that enhance the theory-testing capability of process tracing methods. Notably, many of the conventional causal logics underpinning competition-induced change do not receive support in either Mexico or Brazil. For instance, in Mexico, the evidence supports the veto player logic in Michoacán, though ideological commitments prove strong enough to

overcome the obstacles of increased veto points, and judges emerge as critical actors in shaping the reform agenda and lobbying legislators to alter the preferences of these politicians. The evidence also supports a cynical brand of the entrenchment logic – what I term “patronage-preservation” – activated by traditional judges and reinforced by conservative, PAN politicians in Aguascalientes, and activated by politicians and judicial elders and essentially accepted by affiliated or sympathetic judges in both Hidalgo and Maranhão. Additional theoretical contributions are discussed below, beginning with clarification or adjustments to existing causal logics, including this last adjustment to what some might consider equivalent to the “hegemonic preservation”, policy-preserving logic of Hirschl and Gillman.

Adjustments to Causal Logics

The results suggest two corrections to the causal logics underpinning electoral competition. First, the “profit-maximizing” aspect of the first insurance sub-logic that builds on insights from Landes and Posner (1975) may not operate in newer and poorer democracies, where political time horizons tend to be shorter. Second, the “policy-preservation” aspect of the third insurance sub-logic may also not operate in new democracies, where current elites are frequently affiliated with the authoritarian regime, and therefore the kind of entrenchment that takes place has more “patronage preserving” aspects. In advanced or established democracies, where current elites, i.e., current majorities, are not the same majorities that were dominant during an authoritarian period, the incentive to entrench policies makes sense. However, in newer democracies, where traditional elites have still not been entirely displaced and where clientelist networks tied to these elites remain the dominant conduit for politics, electoral uncertainty generates

incentives to preserve sources of patronage rather than preferred policies. For instance, rather than seeing Hirschl's neoliberal elites seeking to insulate their preferred economic policies, or Gillman's Republican or Democratic coalitions of elites seeking to insulate their agendas of economic nationalism or the good society, respectively, traditional elites in new democracies engage in balder forms of entrenchment following the "patronage-preservation" logic. In short, in contrast with "policy preservation" and other logics of ideological entrenchment, the "patronage-preserving" logic assumes two things: (a) current majorities are traditional, non-ideological elites tied to the authoritarian regime, and (b) there is no real strengthening of courts taking place, despite actions suggesting otherwise (even in Maranhão, where federal institutions have been mobilized, limited change has taken place). Future research might examine whether this pattern is unique to new Latin American democracies or whether it is more widespread; whether this is a legacy of Latin American forms of authoritarianism; or whether the style of democratic transition matters.

Authoritarian Baselines and Legacies

The findings also indicate ways in which authoritarian baselines – the ideological location of the authoritarian regime – can exert lasting influence on the strength of courts. In Mexico, the dominant-party regime under the PRI occupied a centrist or relatively non-ideological position, and two main opposition parties, the leftist PRD and rightist PAN, pushed for movement away from this baseline. In the results, the PRI continues to act as a drag or drain on court strength, generating much weaker courts than either the PRD or PAN. In Brazil, the military regime placed the authoritarian baseline on the right end of the ideological spectrum. The official, government-sactioned opposition took the

form of the centrist MDB, which translated into the PMDB after the softening of the military regime in 1979. The main pressure for movement away from the rightist authoritarian baseline came from this centrist grouping, as well as center-left (PDT) and leftist (PT) parties. As was the case in Mexico, the results show that rightist parties continue to act as a drain on court strength, particularly parties that grew out of the pro-military PDS. However, while the large-N results suggest centrist and center-left parties have exerted the strongest upward pressure on court strength, the small-N results suggest center-left and leftist parties have exerted the strongest positive influence. Moreover, the large-N results identify a positive effect exerted by the rightwing PFL, an influence that is distinctly absent and contradicted by the case study in Maranhão. Overall, however, the ideological location of the authoritarian baseline is important, and this baseline exerts a meaningful and lasting influence. In order to understand the origins of court strength, therefore, these authoritarian baselines and legacies indicate we must also understand the previous sources of judicial weakness and the continuity or persistence of these sources. Indeed, the motivations and the mechanisms of reformist forces are shaped by the nature of the forces they are reacting against. Put simply, the nature of the new order is conditioned to a certain extent by the nature of the *ancién* regime.

This is not to say simply that history matters, or that the process-based methods employed in the small-N phase of research constitute simple narratives or “doing history” (Hall 2003). Indeed, the large-N results also suggest the importance of authoritarian baselines and legacies. However, even the qualitative research is not “doing history.” As Hall notes, historical research often seeks to gather as much information as possible about a phenomenon from as many different perspectives as possible. In contrast, the theory-

guided process tracing employed here specified expected causal patterns derived from existing theories of institutional change, and then sought to test these theories by judging observed causal processes against the expected causal patterns. As detailed above and in Chapters 6 and 7, the results support a “patronage-preserving” logic of traditional elites affiliated with the authoritarian regime. This result, coupled with the positive influence of progressive judges and left-of-center politicians, supports the conclusions regarding authoritarian baselines and legacies.

This conclusion has important implications for future research. If the ideological base of authoritarianism has a lasting legacy that shapes the trajectory of legal institutions in emerging democracies, future research needs to be more attentive to the continuity of authoritarian politics and styles of governance. These legacies also shape the nature of reformist initiatives, so attention to authoritarian baselines and legacies offers meaningful lessons for the study of persistent forms of authoritarianism as well as reformist movements.

Ideas and Epistemic Communities

The results highlight the role of ideas and the way in which these ideas, in addition to policies (see above), travel across levels and units of a regime, as well as across national boundaries. In Mexico, a core group of Spanish-trained judges played a critical role in designing and lobbying in support of the reform. Notably, these judges were influenced by prominent, progressive judges in Spain, judges who contributed to and grew out of the “democratic justice” movement that shaped the Spanish transition to democracy. The vision of the social and democratic functions of law and courts maps onto the more progressive visions of democratic institutions in the leftist PRD, and

constrasts sharply with the baseline conditions of judicial institutions in Mexico. Thus, judges whose ideas about law and the legal complex were shaped in Spain have combined with leftist politicians to put these ideas into practice at the local level in Michoacán.

These progressive currents in Spain and Mexico find their equivalent in Brazil in the form of the “alternative law” (*direito alternativo*) movement (Engelmann 2004; 2008; see Chapter 7). This movement crested in Rio Grande do Sul, shaping progressive attitudes among many judges. Importantly, the influence of this movement extended well beyond the state. Key judicial leaders in the northern state of Maranhão, for instance, cite the influence of *direito alternativo* in shaping their own views about the role of judges, law, and courts in democratic societies, resonating with statements by progressive judges in Michoacán. Thus, in both Mexico and Brazil, we see examples of the important role of ideas in shaping policy preferences, and the ways in which these ideas travel across levels and units of a regime, and even across national boundaries, via teacher-student relationships, conferences, and other forms of conduct “beyond the bench”.

Notably, ideas can map onto preferences of the left or right. In Mexico, the case of Aguascalientes reveals a PRI governor, Granados Roldán, who was an outsider to local politics (he had been named for the governorship by President Salinas de Gortari over the preferred candidate of local elites), and whose policy preferences coincided more with neoliberal currents within the PAN, or perhaps the more technocratic, economic currents within the PRI. A key influence in his own ideational trajectory was attendance at a meeting of the World Economic Forum, after which he pursued a reformist agenda in the courts. Unlike the social or democratic lens through which progressive judges and

politicians viewed law and courts, Granados Roldán viewed legal institutions through an economic lens, as means to enhance investment, commercial transactions, and business activity, a lens that maps onto perspectives regarding the rule of law at the World Bank (e.g., Kaufman et al. 1999), or even critical perspectives on the need to re-emphasize the role of institutions within the neoliberal agenda (see Naím 2000; Williamson 2000).

Recent efforts in both countries seem to strike a more ideologically neutral position while strengthening the administration of justice. These efforts include (1) the FGV's Judicial MBA program ("MBA do Judiciário"), which was carrying out pilot projects in teaching managerial and administrative skills to judges in four states as of 2007, including Acre and Rio Grande do Sul; (2) the conferences and workshops sponsored by Mexico's Supreme Court over the course of two years, which produced a "White Book of Judicial Reform" in 2006; and (3) consulting by researchers and academics at UNAM-IIJ and CIDE, who have also carried master's programs in judicial administration to certain states, e.g., Aguascalientes, similar to the FGV's MBA program, though less extensive and systematic than the FGV's program, whose pilot projects and strategic plan are structured to reach first- and second-instance judges in all states.¹⁸¹ Similar, though much less systematic efforts by the IIJ and CIDE.

¹⁸¹ Hector Fix-Fierro and Jose Antonio Caballero Juárez are key figures in Mexico. Both were part of IIJ-UNAM until 2006. As of 2007, Fix-Fierro was the director of IIJ-UNAM and Caballero Juárez was the director of CIDE's law school (*División de Estudios Jurídicos*). In Brazil, the FGV's law school in Rio de Janeiro, *Direito-Rio*, is the key academic institution, which as of 2007 was directed by Joaquim Falcão. Falcão was a former counselor on the National Justice Council (CNJ), granting prestige and credibility to the MBA program. Notably, where a reduced number of academics from IIJ-UNAM or CIDE appear to do most of the consulting or teaching in Mexico, a combination of academics and working judges from around the country do the teaching in the FGV's program in Brazil. For instance, in a weekend session I attended in Acre, the instructor was a senior judge from Rio Grande do Sul.

Judge-led Reforms and Conduct “Beyond the Bench”

Throughout this study, I have sought to address the extent to which politicians and judges shape institutional change. That is, the analysis considered the influence of actors external and internal to judicial institutions, resonating with studies that distinguish between “congress-centered” and “court-centered” approaches to judicial politics (Cameron 2005). However, the case studies have also highlighted the extent to which judges not only act alongside politicians, but also often initiate reformist movements, shaping the reform agenda and activating politicians.

This judge-led emphasis highlights “extrajudicial” activity (Whittington 1995; Dubeck 2007), or what I re-label as conduct “beyond the bench”, including lobbying, litigation, labor actions, teaching, conference participation, and public speaking. Notably, these types of conduct identify causal mechanisms by which ideas regarding the role or proper function of judges and courts are transmitted. Thus, while the previous section identifies the importance of ideas, and also identifies some of the key actors and events, the emphasis on conduct beyond the bench helps to complete our understanding of causal mechanisms shaping judicial change.

Policy Movement Across Levels and Units of a Regime

Complementing the discussions above of ideas, key actors and events, and judicial conduct beyond the bench, certain institutions also help understand the mechanisms of change. Specifically, while Mexico does not have a national judicial council that supervises state courts, and only half of the 31 states have local judicial councils (and these vary in structure, powers, and composition; see Chapter 6), Brazil has a national council that oversees the administration of all courts, including state courts.

The National Justice Council (CNJ) in Brazil therefore acts as a “federal foothold” for local actors to use in implementing judicial change. For instance, in Maranhão, judges, lawyers, and other court staff have separately filed complaints with the CNJ, leveraging this national institution to effect change at the local level.

In a separate case, the second judicial strike in Acre in 2003 reveals how local logics of change can be affected, in that case in a negative manner, by the national logic of policy change. During the second strike in Acre, the judges’ association (ASMAC) kept a strike going much longer than necessary, despite the fact that the governor was offering a 22% salary increase. While the decision to continue the strike was not locally rational – and interviewed judges expressed bitterness regarding the length of the strike – the extension was nationally strategic because of ongoing national debates regarding the public pension system. Specifically, the national judges’ association (AMMA) encouraged the local association (ASMAC) to maintain the strike in order to leverage bottom-up pressure on the national debate, which was unrelated to the motives of the local strike. Ultimately, the strike ended without achieving any of the stated aims. Although judges obtained a salary increase several months later, the strike was widely regarded as a failure. Thus, even debates about different and unrelated reforms can shape policy change across levels of a regime.

These instances of policy change, or the lack thereof, speak directly to Snyder’s (2001b) plea for greater understanding of the ways in which policies travel across levels and territorial units of a regime, especially in large federal systems. The attention to ideas and motivations, as well as key actors, events, and causal mechanisms, help construct finer theories about this kind of policy change. Further, the “federal foothold” for judicial

change offered by the CNJ identifies a pattern of local-federal-local change that suggests a domestic variant of Keck and Sikkink's (1998) policy "boomerangs".

Implications and Suggestions for Future Research

Stark differences exist between Mexico and Brazil. The differences include styles of authoritarianism, the temporal duration of authoritarianism, the ideological location of authoritarian baselines, transitions to democracy, party systems, and styles of judicial federalism. Further, data for each country was collected separately, and the construction of the datasets for the large-N analysis presented different coding challenges. Each of these differences between the two countries was expected to dilute the results, especially in the extent to which they might travel across both countries.

Despite these differences, there is remarkable consistency in the explanation of judicial change across the Mexican and Brazilian states. First, electoral competition matters, but is not a key determinant of change. Rather, in both cases, ideology and ideas exert the most statistically significant, consistent, and meaningful influence on judicial change. Indeed, the combined results of the large-N and small-N analyses suggest competition is not a necessary condition for change, while ideology appears to be a sufficient one.

The causal similarities across Mexico and Brazil are especially apparent with regard to ideology and the role of ideas. Politicians on the left side of the ideological spectrum matter the most for judicial strength, and ideologically sympathetic, progressive judges also matter in both countries. Notably, center-right politicians of neoliberal stripes exert a positive effect on courts, but this effect appears to be lower and less consistent

that the effect of left-of-center politicians. Perhaps most importantly, judges are key actors in the process of judicial change, designing reforms, shaping the reform agenda and the policy space or options of reform, and triggering or activating the preferences of politicians. Frequently, judges and politicians draw on common bonds of both ideological affinity and friendship. Thus, a key finding in both countries is that, rather than rational, electoral incentives, judicial change is shaped principally by cultural-ideational forces.

The conclusions regarding ideology suggest that the ideological identity of local administrations has broad implications for the nature of development, democratic practice, and citizenship. Theoretical expectations and qualitative evidence teach us that leftist and rightist parties both seek to strengthen courts, but for different reasons. The left prioritizes democracy-oriented projects regarding the judiciary, while the right prioritizes market-oriented projects. These different policy priorities can lead to very different policies regarding courts at the local level, emphasizing either democratic practice and citizenship or market relations and commerce. The findings suggest that courts are being strengthened by both social-democratic currents on the political left and neoliberal currents on the political right, but that they may be pulled in different policy directions depending on the ideological nature of the administration. This kind of tension in institution building has the potential to generate greater unevenness in a judiciary that is already uneven across Mexican and Brazilian states. Future research that examines patterns of litigation across different types of cases can offer greater insight into whether democracy and market promotion generate positive or negative synergies, or whether they are independent of each other.

Another implication of the ideology finding is that broad shifts along a left-right

ideological spectrum may strengthen or weaken judicial institutions and the rule of law. In Mexico, if scholars are correct in estimating the country is shifting to the right (e.g., Ai Camp 2007), the lower effect of the right on courts, relative to the left, may not bode well for the judiciary. If other scholars are correct and Mexico is shifting to the left (e.g., Alcántara 2009), this trend bodes well for courts. In Brazil, the rise of the PT to national prominence bodes well for courts, although there are clear signs the PT is moderating its ideological stance since 2002 (Cleary 2006; Power and Zucco 2009). Regionally, the results indicate that the “left turn” of 10 Latin American countries (including El Salvador as of March 15, 2009) (Cleary 2006) bodes well for courts. Future research that offers finer examinations of ideological patterns can help clarify this debate, as well as understand the effect of ideology on the strengthening of courts and other aspects of state building. Importantly, the results highlight the need to distinguish between different variants of the left and right (across countries and within countries). Moreover, the results highlight the need to distinguish between different currents within a single party, e.g., socially conservative and neoliberal currents within the PAN in Mexico.

In sum, the present findings extend existing political-institutional, strategic, and social movement literature on institutional change and judicial reform to new empirical areas, and contribute new insights into the political explanation of judicial change. The attention to specifying and adjudicating among disparate causal logics contributes a finer theoretical understanding of judicial change. Further, the methodological choices demonstrate the strengths of multi-method research at the subnational level, highlighting understudied opportunities for “nesting” cases within time-series cross-section data, and addressing how process-based qualitative research can neutralize what is conventionally

understood as a weakness of case studies at the subnational level. These findings and insights enhance our understanding of the sources of court strength and the partisan nature of judicial change in newer and poorer democracies, and identify new avenues for empirical research and theoretical development.

Appendices

Appendix A. List of Acronyms and Glossary of Legal Terms

BRAZIL

Acronyms

ABONG	Associação Brasileira de Organizações não Governamentais
ADI	Acção Direta de Inconstitucionalidade (sometimes ADIN or Adin)
AJUFE	Associação dos Juizes Federais
AJURIS	Associação dos Juizes do Rio Grande do Sul (Rio Grande do Sul Judges Association)
AMB	Associação dos Magistrados Brasileiros (Brazilian Judges Association; national association)
AMMA	Associação dos Magistrados Maranhenses (Maranhão Judges Association)
ARENA	A. Renovação Nacional
ASMAC	Associação dos Magistrados do Acre (Acre Judges Association)
CEBEPEJ	Centro Brasileiro de Estudos e Pesquisas Judiciais
CNJ	Conselho Nacional da Justiça
CONTAG	Confederação Nacional dos Trabalhadores na Agricultura
CUT	Central Unica dos Trabalhadores
EC	Emenda Constitucional (“Constitutional Amendment”)
FGV	Fundação Getulio Vargas (Rio de Janeiro (FGV-RJ) and São Paulo (FGV-SP))
IBGE	Instituto Brasileiro de Geografia e Estatística
IBRAJUS	Instituto Brasileiro de Administração do Judiciário
IPEA	Instituto de Pesquisa Econômica Aplicada
LC	Lei Complementar (“complementary law”; state law that modifies existing law)
LE	Lei Estadual (“State Law”)
LF	Lei Federal (“Federal Law”)
MDA	Movimento Democrático Acreano (2002 coalition of Flaviano Melo (PMDB) and Narciso Mendes (PPB) in the state of Acre)
MDB	Movimento Democrático Brasileiro
MS	Mandado de Segurança
OAB	Ordem dos Advogados do Brasil
PCA	Procedimento de Controle Administrativo; administrative action by CNJ (see above) that reviews procedures and conditions in state courts. [These statement by the CNJ are not binding but are highly authoritative].
PP	Pedido de Providências (type of action before the CNJ).
PUC	Pontificia Universidade Católica (e.g., PUC-RS in Porto Alegre, PUC-RJ in Rio de Janeiro, or PUC-SP in São Paulo)
SINDJUMP	Sindicato do Servidores da Justiça e do Ministério Público (union of employees from judiciary and public prosecutor’s office, in Maranhão)
STF	Supremo Tribunal Federal
STJ	Superior Tribunal de Justiça
TJ	Tribunal de Justiça

TJAC	Tribunal de Justiça – Acre
TJRS	Tribunal de Justiça – Rio Grande do Sul
TJMA	Tribunal de Justiça – Maranhão
TRE	Tribunal Regional Eleitoral (e.g., TRE-AC, which is the Regional Electoral Tribunal in the state of Acre)
TSE	Tribunal Superior Eleitoral
TST	Tribunal Superior do Trabalho

Political Parties

PC do B	Partido Comunista do Brasil
PDS	Partido Democrático Social
PDT	Partido Democrático Trabalhista
PFL/DEM	Partido da Frente Liberal (renamed Demócratas (DEM) in 2007)
PL	Partido Liberal
PMDB	Partido do Movimento Democrático Brasileiro
PPB/PP	Partido Progressista Brasileiro, now Partido Progressista, or PP (Partido Progressista Brasileiro incorporated PP in 1995 and then dropped the “B” in 2003). Not to be confused with Partido Popular of early 1980s.
PPS	Partido Popular Socialista
PSB	Partido Socialista Brasileiro
PSD	Partido Social Democrático
PSDB	Partido da Social Democracia Brasileira
PT	Partido dos Trabalhadores
PTB	Partido Trabalhista Brasileiro
PV	Partido Verde

Terminology

Agravo de Instrumento	An appeal of a procedural decision or ruling conducted as part of litigation, prior to the final sentence on the main substance of litigation. In this regard, this legal recourse is closest to an “interlocutory appeal”. Along with “apelação” below, “agravo” is one of several appeal mechanisms (“recursos”) recognized in Brazilian law (see Brazilian Code of Civil Procedure (<i>Código de Processo Civil</i> , or CPC, Title X).
Apelação Câmara	An appeal of a final sentence in litigation. Section of Tribunal identified by the area of law for which it is responsible, e.g., Câmara Cível; literally “chamber”. “Câmara Recursal” can be a general term for any appeals chamber, but is often used with specific reference to appeals from small claims courts (“Juizados Especiais”).
Comarca	Geographic jurisdictional unit within a state, i.e., a “judicial district”. See “distrito judicial” in Mexico.
Deferido	A type of judicial decision regarding a claim made by a litigant, meaning “allowed”, i.e., “favored” (in a judgement or sentence,

	this means the court finds in favor of, or “defers to”, a requested action, i.e., a finding for the plaintiff); contrast with “indeferido” (not allowed).
Desembargador/a	Second-instance judge at the state level in Brazil; a judge on the state’s highest court, namely, the Tribunal de Justiça (TJ); appellate or second-instance judge. The title is usually abbreviated as “Des.” While somewhat awkward or unwieldy, the term’s etymology is interesting. The root is “embargo”, which, aside from having a cognate in English, is also a term for an appellate mechanism in Brazilian litigation (along with “agravo” and “apelação” identified above). Thus, when faced with an unfavorable decision at a lower court, the losing party could appeal by “embargoing” the decision; it was then the appellate judge’s role to decide whether to “un-embargo” the case. Thus, Desembargador literally translates to “un-embargoer”.
Doutor/a	Title of lawyer or judge; form of addressing judges, lawyers, and legal professionals, e.g., Doutor Silva.
Entrância	Hierarchical designation for different geographic regions of a state’s judicial structure, usually ranked as “first”, “second”, and “special”; “first” refers to rural locations with low population and low demand for judicial services; “second” refers to intermediate localities; “special” refers to the state capital and other major cities in the state. Throughout their career, judges usually start at a lower “entrância” and work their way up the hierarchy, aiming to reach the state capital and then promote to “desembargador”.
Foro/Fórum	First-instance court at state level; also, general term for local courthouse, which can house several different courtrooms, e.g., civil, criminal, family, juvenile, traffic, small claims, etc.
Improbidade administrativa	Legal term for dishonest or otherwise improper actions by public officials; this term loosely translates as “administrative corruption” and can carry both criminal and civil penalties.
Indeferido	A type of judicial decision meaning “not allowed”, i.e., a finding against the requested actions, against the plaintiff. Contrast with “deferido” above.
Instância	Jurisdictional limitation, i.e., “instance”, as in “first-instance” or “second-instance” courts; also referred to as “grau”, e.g., “primeiro grau” (first instance), or “segundo grau” (second instance). Contrast this term with “entrância” above, which categorizes a geographic region according to population and the demand for judicial services.
Juíz	First-instance judge
Juíz Auxiliar	Auxiliary first-instance judge.
Juíz Substituto	Entry-level judge; this is a designation for a probationary, first-instance judge.

Juíz de Direito	First-instance judge with permanent status; after Juíz Substituto passes probationary term, he/she becomes a Juíz (or Juiza) de Direito
Juizado	Court; usually refers to small claims court, e.g., Juizado Especial
Juizado de Pequenas Causas	small claims court; see also Juizado Especial, which is more common.
Juizado Especial	Small claims court; also, Juizado de Pequenas Causas (Juizado Especial is more common).
Jurisdicionados	Litigants or those who seek redress from the court; similar to “justiciables” in Spanish. This term can often sound overly formal.
Liminar	Order by the court, usually to stop an action or proceeding; a preliminary order or decision; an injunction.
Magistrado	Judge or magistrate; can be any kind of judge (e.g., first or second instance, or justice of supreme court). This is the broadest term for a judge. Thus, the national association of judges, which includes judges of both very low and very high rank from across the country, is the Associação de Magistrados Brasileiros (AMB).
Mandado de Segurança	Request for injunction or court order; request for court action.
Ministro	Justice of one of the supreme courts (e.g., STF or STJ)
Presidente	Chief judge or justice; at the state level, term refers to president of court, who is also the head of the state judiciary, i.e., chief judge of the Tribunal de Justiça.
Recurso	Appeal; this is the broadest term for appeal and includes several distinct appeal mechanisms, including “agravo”, “apelação”, and “embargo”. Thus, an appeals chamber would be a “Câmara Recursal” (though this term is often used specifically with reference to chambers that review appeals from small claims courts, “Juizados Especiais”)
Tribunal	Second-instance court at the state level; appellate court; highest jurisdiction at state level.
Vara	Section of first-instance court or “forum”; each section is identified by the area of the law for which it is responsible, e.g., “vara familiar”; literally “branch”.

MEXICO

Acronyms

AC	Asociación Civil
CIDAC	Centro de Investigación para el Desarrollo, A.C.
CIDE	Centro de Investigación y Docencia Económicas
CV	Capital Variable
FLACSO	Facultad Latinoamericana de Ciencias Sociales (unless otherwise stated, the acronym refers to the Mexico City campus, “sede México”)

IJ	Instituto de Investigaciones Jurídicas
INEGI	Instituto Nacional de Estadística, Geografía e Información
SA	Sociedad Anónima
SCJN	Suprema Corte de Justicia de la Nación
STJ	Supremo Tribunal de Justicia. This is a designation for some state supreme courts, e.g., Michoacán or Aguascalientes. The title “Supreme” is usually reserved for the national supreme court, “SCJN” (see also “TSJ” below).
TSJ	Tribunal Superior de Justicia (common designation for state supreme courts, using “Superior” instead of “Supreme”; however, see “STJ” above).
UNAM	Universidad Autónoma de México

Political Parties

PAN	Partido de Acción Nacional, or “National Action Party”. Conservative party on the right with bases in the business community and Catholic conservatives. The party that defeated the PRI in the presidential elections of 2000 to usher in Mexico’s democratic era, it can have either a market-oriented flavor supported by business leaders and commercial sectors, or it can have a socially conservative flavor supported by the Catholic church and groups organized against contraception, abortion, homosexuality, and other social issues.
PRD	Partido de la Revolución Democrática (Party of the Democratic Revolution). Main leftist party in Mexico, formed by dissidents of the PRI in 1988-1989.
PRI	Partido Revolucionario Institucional (Institutional Revolutionary Party); previously hegemonic and historically dominant party that ruled Mexico from 1929 to 2000.
PRM	Partido de la Revolución Mexicana; precursor to PRI; now defunct.
PSUM	Partido Socialista Unido Mexicano
PT	Partido del Trabajo
PVEM	Partido Verde Ecologista Mexicano

Terminology

Derecho Comunal	“Communal law” (also called “Justicia Comunal”). This is an area of the law based on indigenous practices. As of 2007, this area of the law, akin to “Indian Law” in the U.S., was a fairly recent phenomenon but was increasingly being legislated and systematized across Mexico’s states, including attention to translation issues, the selection of “communal judges”, and the appropriate fora for communal litigation and disputes.
Distrito Judicial	Judicial district; geographic demarcation that defines the territorial jurisdiction of a court; analogous to “comarca” in Brazil.
Entrancia	Category of judicial district based on geography, population, and judicial workload. In each state, there is usually a hierarchy of “entrancias”, ranked from low to high. In some states, e.g., Michoacán, these are ranked

	by letters (A, B, and C). Throughout the judicial career, judge start at the lower entrancias and work their way towards the higher ones, which are usually in the state capital.
Instancia	Jurisdictional designation for courts, i.e., “instance”, as in “first-instance” and “second instance”.
Juez	Judge
Justiciales	Litigants; see “jurisdicionados” in Brazil. Both of these terms are a rather generic way of referring to “clients” of the judicial system, so some legal professionals dislike the term. A preferred term is sometimes “usuario”, which literally means “user” but roughly translate as “customer” or “client”.
Licenciado	Title of lawyer or any professional with a college degree.
Magistrado	Appellate judge sitting on a state supreme court. Translates literally as “magistrate”, but unlike the U.S., where this term can refer to first-instance judges of the lowest rank or even auxiliary judges who are outside the formal judicial career, in Mexico this term refers to judges at the top of the state’s judicial hierarchy.
Ministro	Justice of the national supreme court.

Appendix B. Maps of Variation in Electoral Competition and Ideology in Mexico and Brazil

Figure B-1. Average Margin of Victory across Mexican States, 1993-2007

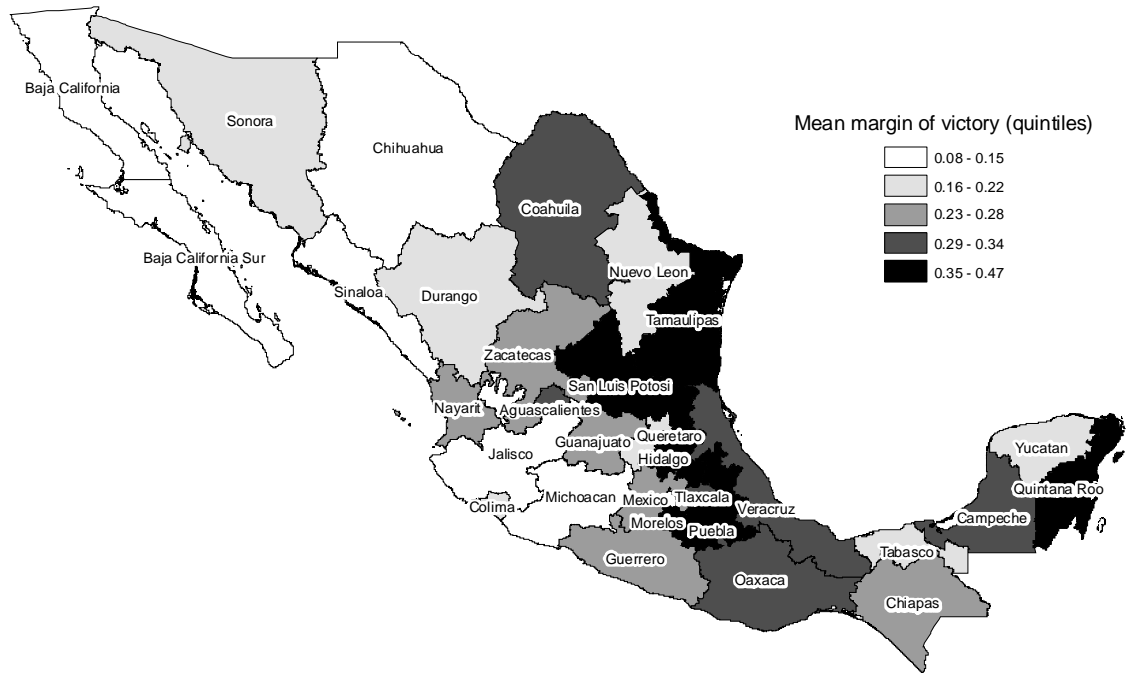


Figure B-2. Average Effective Number of Candidates (ENC) across Mexican States, 1993-2007

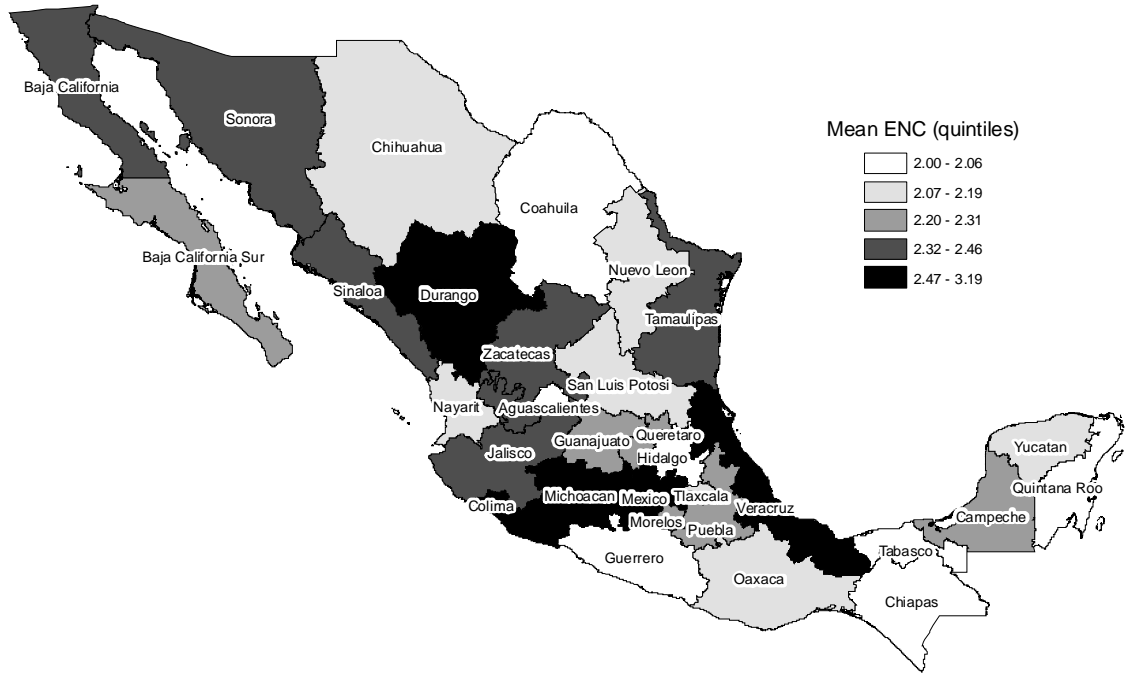


Figure B-3. Average Ideology Score across Mexican States, 1993-2007 (Salamanca Data, 1-10, where 1= left and 10 = right)¹⁸²



¹⁸² Pattern of ideological distribution is remarkably similar to most recent results of federal elections for Chamber of Deputies on July 5, 2009. The results of those elections are attached here as Figure B-7.

Figure B-4. Average Margin of Victory across Brazilian States, 1985-2006

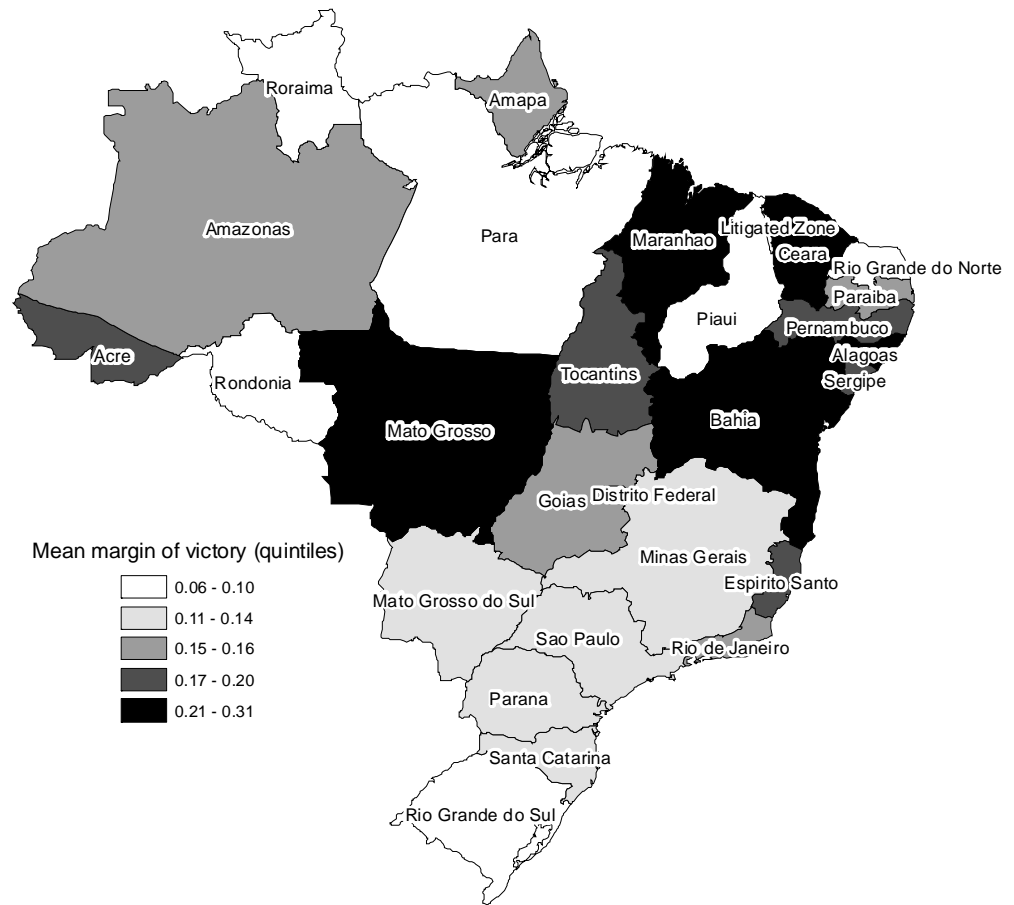


Figure B-5. Average Effective Number of Candidates (ENC) across Brazilian States, 1985-2006

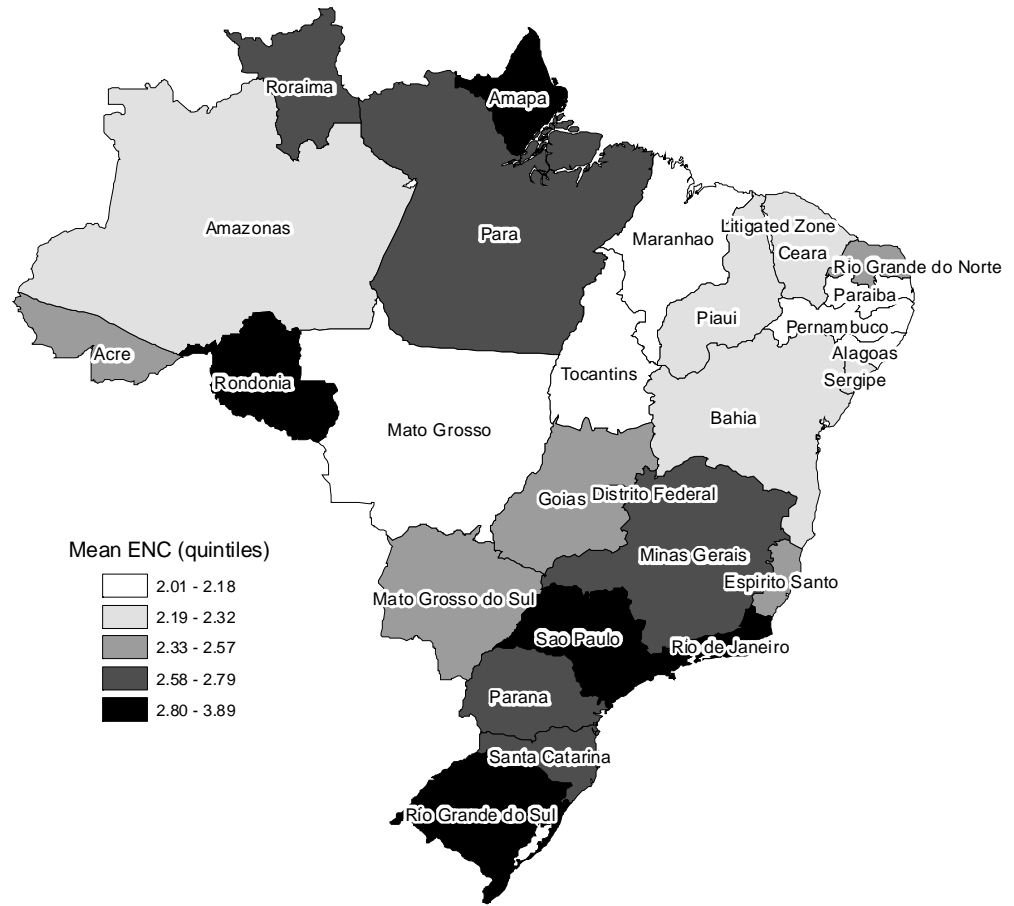


Figure B-6. Average Ideology Score across Brazilian States, 1985-2006 (Power and Zucco Data, 1-10, where 1= left and 10 = right)

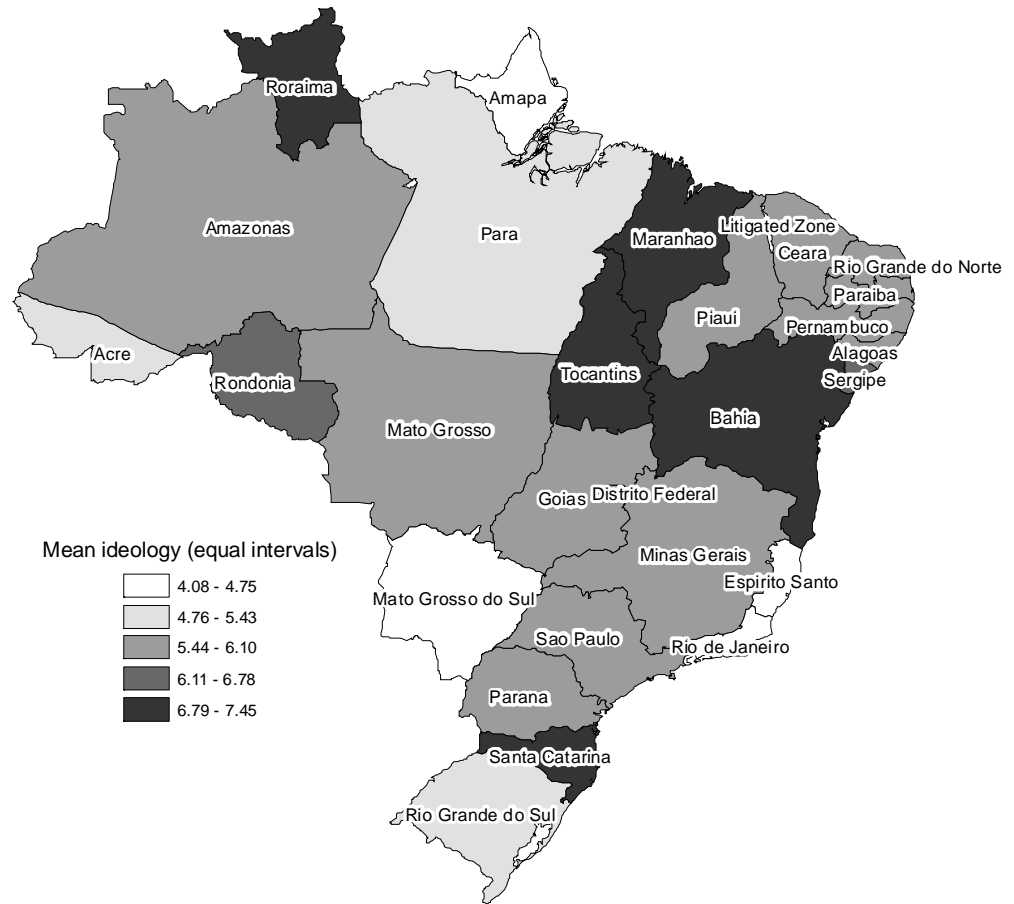
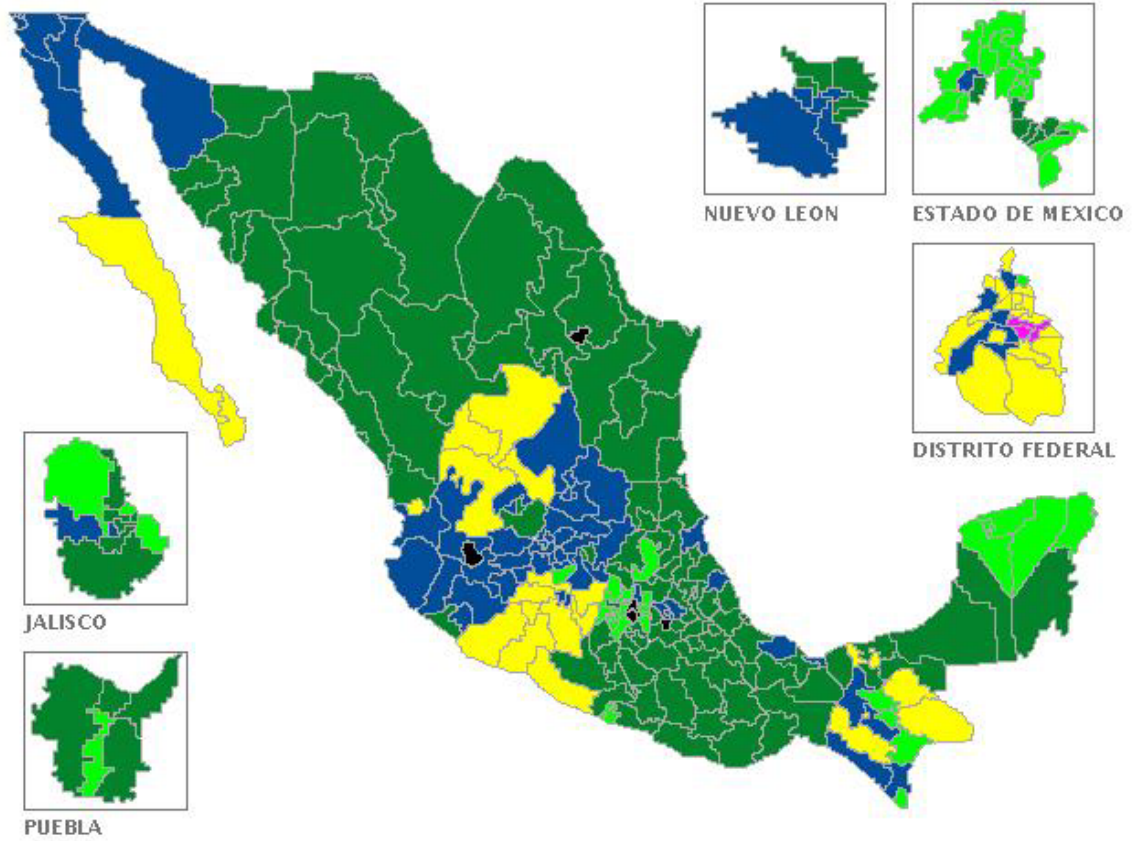


Figure B-7. Election Results for Federal Chamber of Deputies, July 5, 2009 (IFE 2009)¹⁸³



¹⁸³ PRD is yellow, PRI is dark green, and PAN is blue. Note similarities with average ideological distribution from 1993-2007 shown in Figure B-3. These results reflect IFE's preliminary count through July 6, 2009, including 99.87% of votes (IFE 2009).

Appendix C. List of Governor Elections in Brazil and Mexico

The tables below list the year of elections for governor in the Brazilian and Mexican states. In Brazil, elections for governor occur at the same time across all 26 states, so only the year of election is listed below. In Mexico, each state is listed separately since elections are not timed equally across states. Notably, a reform underway in 2008 sought to align all state elections by 2015.

Table C-1. Governor Elections in Brazil

Governor Elections in Brazil
1982
1986
1990
1994
1998
2002
2006
2010 (upcoming)

Table C-2. Governor Elections in Mexico

Governor Elections in Mexico
Aguascalientes
1980
1986
1992
1998
2004
Baja California
1983
1989
1995
2001
Baja California Sur
1980
1987
1993
1999
2005 Feb. 6 (takes office April 5)
Campeche
1985
1991
1997
2003

Coahuila
1981
1987
1993
1999
Colima
1985
1991
1997
2003
Chiapas
1982
1988
1995
2000
Chihuahua
1980
1986
1992
1998
2004
Distrito Federal
1997
2000
2003
Durango
1980
1986
1992
1998
2004
Guanajuato
1985
1991
1995
2000
Guerrero
1980
1986
1993
1999
2005
Hidalgo
1981
1987
1993

1999
2005
Jalisco
1982
1988
1995
2000
Estado de México
1981
1987
1993
1999
2005
Michoacán
1980
1986
1992
1995
2001
Morelos
1982
1988
1994
2000
Nayarit
1981
1987
1993
1999
2005
Nuevo León
1979
1985
1991
1997
2003
Oaxaca
1980
1986
1992
1998
2004
Puebla
1980
1986
1992

1998
2004
Querétaro
1979
1985
1991
1997
2003
Quintana Roo
1975
1981
1987
1993
1999
2005
San Luis Potosí
1985
1991
1997
2003
Sinaloa
1980
1986
1992
1998
2004
Sonora
1979
1985
1991
1997
2003
Tabasco
1982
1988
1994
2001
Tamaulipas
1986
1992
1998
2004
Tlaxcala
1980
1986
1992

1998
2004
Veracruz
1980
1986
1992
1998
2004
Yucatán
1981
1987
1995
2001
Zacatecas
1980
1986
1992
1998
2004

Appendix D. Auxiliary Tables and Figures of Typicality Scores

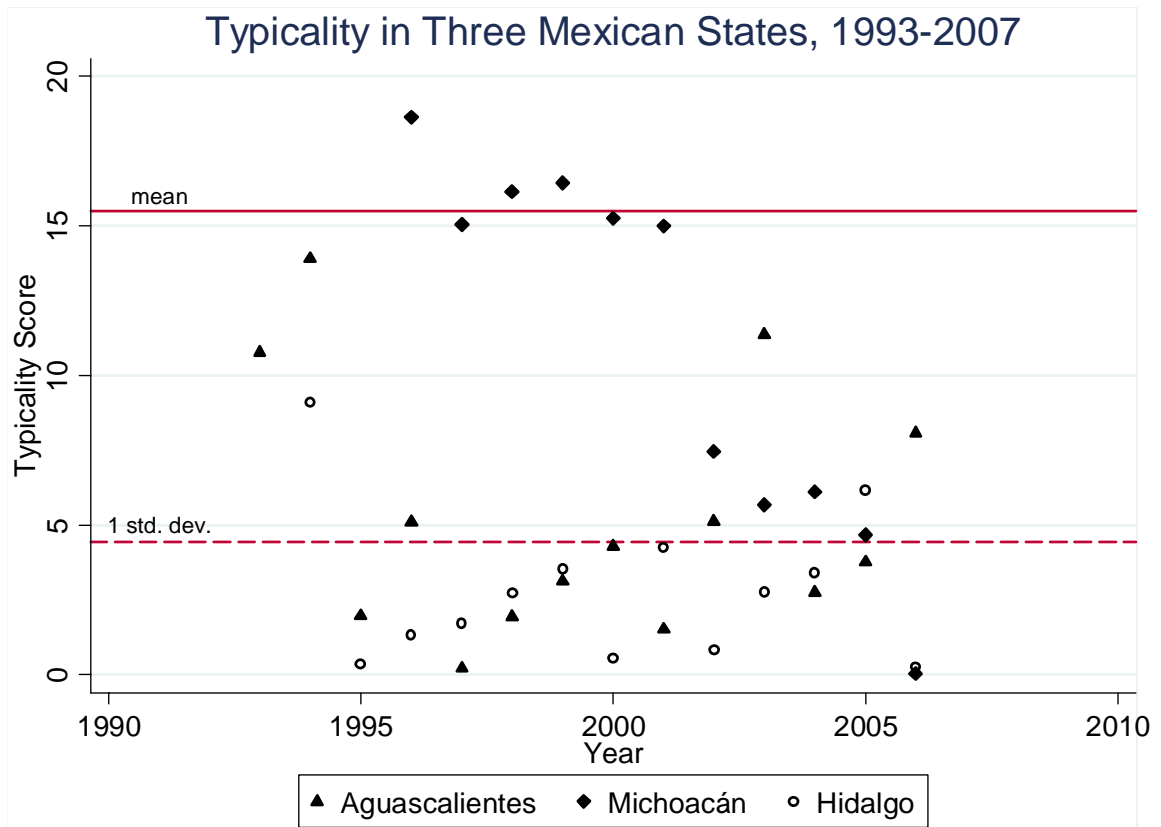
Table D-1. 30 most atypical or worst-predicted observations in Brazil.

no.	state-year	typicality score	spending
1	Ceará-1995	4.8352	0.28
2	Rondônia-1993	3.8908	0.51
3	Santa Catarina-2003	3.4616	1.15
4	Santa Catarina-2004	2.6113	2.74
5	Alagoas-2001	2.4355	3.10
6	Alagoas-2000	2.4158	3.18
7	Alagoas-2004	2.2367	3.98
8	Alagoas-2003	1.9521	5.20
9	Paraná-1997	1.6886	295.08
10	Acre-1993	1.5580	112.53
11	Acre-1991	1.5367	109.20
12	Roraima-1999	1.5154	89.70
13	Acre-1994	1.5107	124.11
14	Acre-1992	1.4713	103.16
15	Roraima-2001	1.4207	86.58
16	Maranhão-1987	1.4087	5.34
17	Acre-1995	1.3563	104.72
18	Ceará-1991	1.3328	11.35
19	São Paulo-1992	1.3281	201.72
20	Acre-1996	1.3249	100.16
21	Amapá-1993	1.2800	144.41
22	Amapá-1999	1.2750	125.24
23	Minas Gerais-1986	1.2736	9.59
24	Maranhão-1985	1.2711	4.64
25	Amapá-1994	1.2658	163.19
26	Roraima-2000	1.2628	74.62
27	Acre-1997	1.2487	93.84
28	RG do Norte-1990	1.2185	9.93
29	Ceará-1992	1.2077	12.78
30	Amapá-1997	1.2037	129.68

Table D-2. 30 most atypical or worst-predicted observations in Mexico.

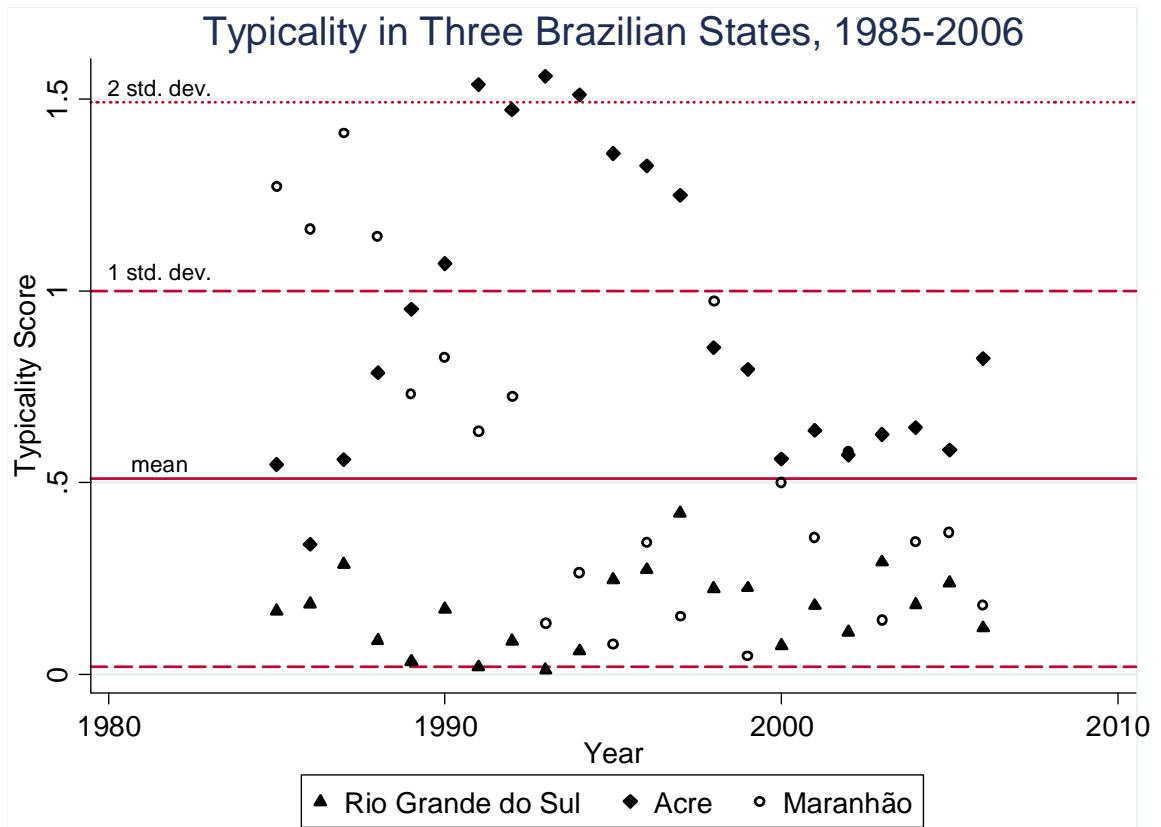
no.	state-year	typicality score	spending
1	Nuevo Leon-1998	62.32	32.53
2	Nuevo Leon-1999	55.25	39.90
3	Nuevo Leon-2000	48.50	50.19
4	San Luis Potosi-2001	48.27	96.01
5	Tabasco-2002	47.44	91.33
6	Nuevo Leon-1997	46.11	36.51
7	San Luis Potosi-2002	45.65	93.71
8	Tabasco-2001	45.42	92.25
9	Nuevo Leon-1996	44.57	32.86
10	Nuevo Leon-1995	43.87	31.58
11	Nuevo Leon-2001	42.50	54.98
12	Nuevo Leon-2003	34.88	65.85
13	Coahuila-1995	34.15	29.64
14	Baja California-1995	33.62	48.27
15	Coahuila-1994	32.93	29.09
16	Tamaulipas-1998	32.65	20.69
17	Jalisco-2002	31.39	103.00
18	Tamaulipas-2001	31.22	31.61
19	San Luis Potosi-1997	30.60	58.95
20	Chiapas-1994	30.55	34.00
21	Estado de Mexico-2000	30.52	24.16
22	Tlaxcala-1993	30.43	41.49
23	Nuevo Leon-2002	30.00	68.47
24	Baja California-1996	28.81	48.60
25	Tamaulipas-1997	28.36	19.59
26	Campeche-1997	28.10	98.00
27	Chihuahua-2001	28.00	108.06
28	Tamaulipas-2002	27.73	36.07
29	Jalisco-1998	27.55	42.41
30	Durango-1994	27.47	20.59

Figure D-1. Typicality Scores over Time in Three Mexican States



Note: pattern in Michoacán shows higher typicality scores from 1996-2001, but then scores drop in 2002 and continue to drop through 2006, ultimately generating the single most typical observation in 2006.

Figure D-2. Typicality Scores over Time in Three Brazilian States



Note: Typicality scores in Acre vary substantially, reaching extreme values of atypicality (Seawright and Gerring 2007) in the early 1990s, and then dropping close to the overall mean starting in 2000.

Figure D-3. Average Typicality Scores across Mexican States (see also Figure 3.2).

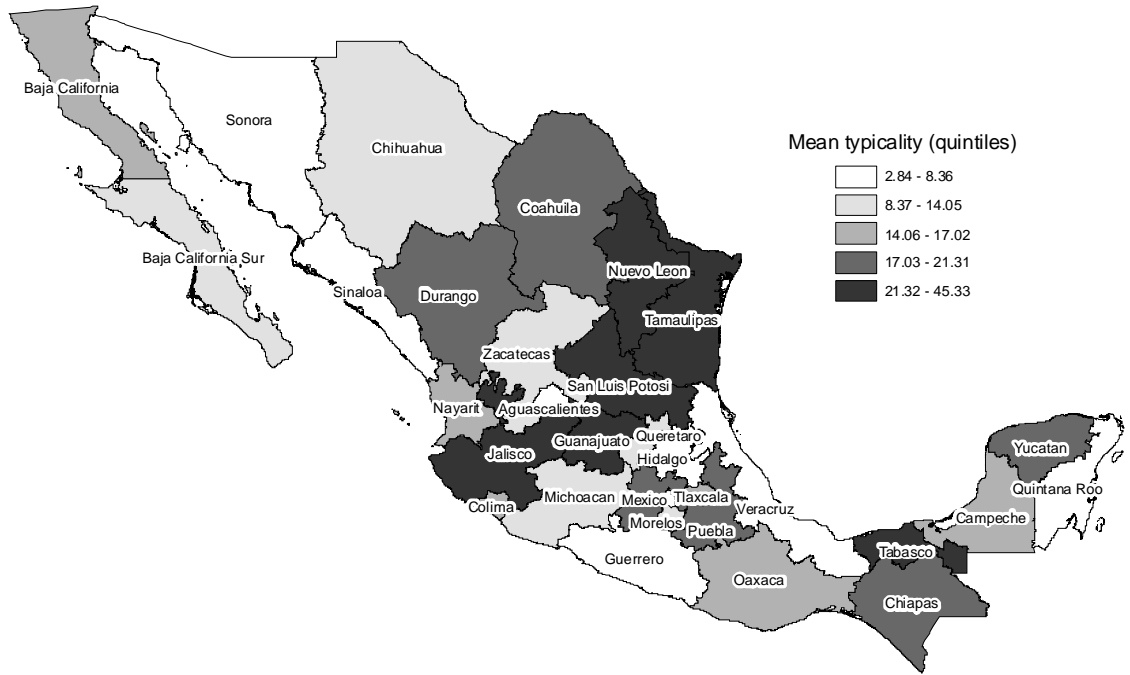
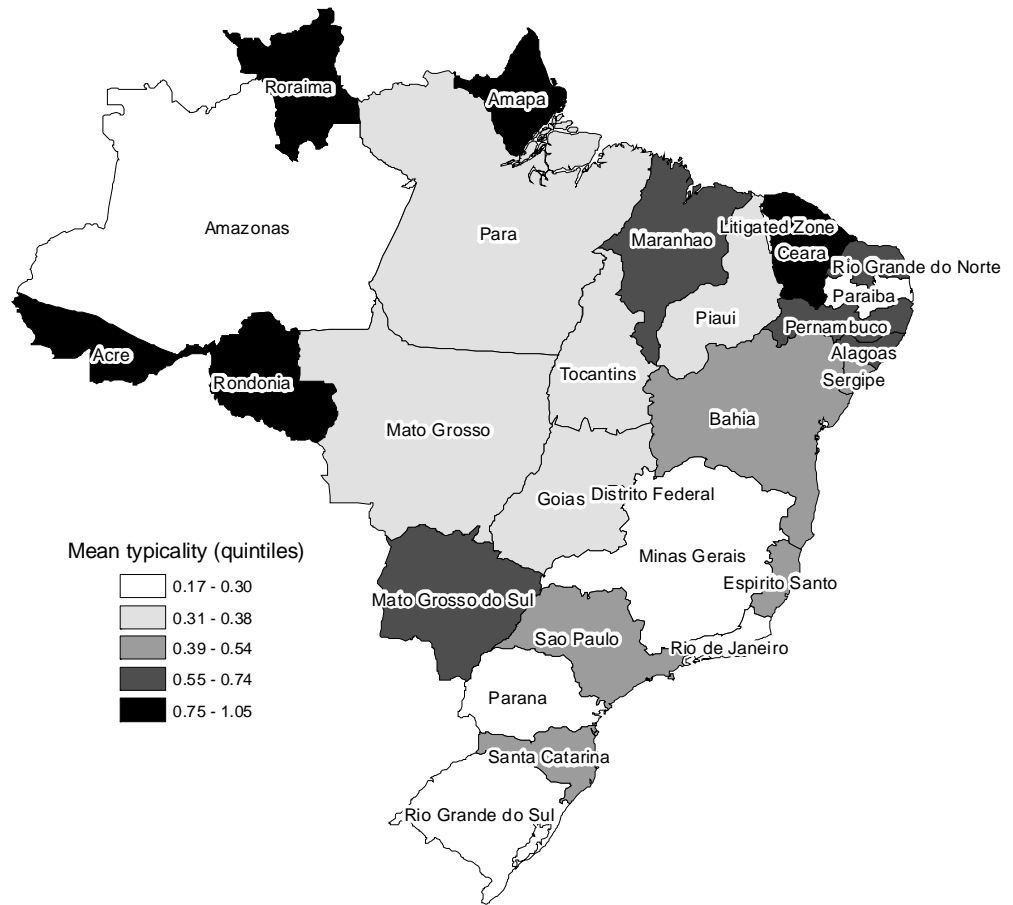


Figure D-4. Average Typicality Scores across Brazilian States (see also Figure 3.3).



Appendix E. Auxiliary GEE Analysis in Brazil Showing PDS-Legacy Parties.

Auxiliary Model	
margin of victory	0.42** (0.20)
divided government	0.20** (0.08)
unified gov (plurality)	-0.00 (0.07)
unified gov (super)	-0.16 (0.11)
PT	-0.02 (0.13)
PPS	0.10 (0.28)
PSB	0.08 0.13
PDT	0.23* (0.12)
PSDB	0.26** (0.08)
PTB	-0.32 (0.23)
PSL	-0.11 (0.43)
PFL	0.08 (0.09)
PDS	-0.31** (0.11)
PPB	-0.41* (.21)
PPR	0.10 (0.18)
PSC	0.47 (0.29)
PTR	-1.20** (0.29)
GDP per capita (logged)	0.29** (0.14)
population density	0.00 (0.00)
election year	0.11** (0.05)
Constant	0.93 (1.18)
N	502
States	26
Wald χ^2	99.21
Prob > χ^2	0.0000

Coefficients with standard errors in parentheses. ** p < .01 * p < .05

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