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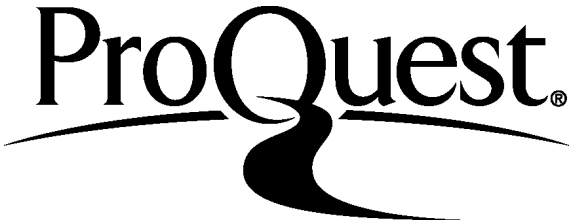

Dedication

To Alejandro and Julia

Judicial Politics of the Mexican Subnational Administrative Courts

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Abstract

Today, practically every country's system of administrative justice includes an administrative court reviewing for agency action. These courts settle a wide range of conflicts between governments and citizens, including very specialized issues such as antitrust, telecommunication, immigration, and human rights' reparations cases. They have a broad impact, not only on citizens looking for redress against the government, but also on the implementation of public policy. However, minimal empirical scholarship has analyzed the origin, evolution, and performance of administrative courts. This thesis fills this gap by addressing the following questions in relation to administrative courts in Mexico: How are administrative courts created? Which political contexts determine the existence of such type of courts? How are they designed? How does this design affect administrative courts' decisions? The researcher created a database encompassing the range of administrative courts in 31 states during 14 legislature periods, encompassing the political origin of each administrative court in Mexico, the specific design features of each, and trends in courts' decisions. The analysis reveals a difference between the political origin of administrative courts and that of constitutional or general courts; posits how reformers might design rules that promote improvements of government performance through

administrative courts; and presents evidence of the influence of design rules over administrative courts' actual decisions.

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Introduction

Since the mid-twentieth century, administrative courts have been increasingly prevalent throughout the world. Today, practically every country's system of administrative justice includes a reviewing body for agency action, but these courts take decidedly different shape in different places.[1] This variety yields a rich library of outcomes that reveal the strengths and limitations of different models. Over the past three decades, scholars in administrative law have increasingly called for analysis of the role of administrative justice with a comparative law perspective.

Many studies of administrative justice have focused on the distinctions between the French tradition and other administrative law systems such as the Anglo-American, German or English systems (Colliard 1939; Weil 1965; Nolte 1994; La Porta, Lopez-de-Silanes, Shleifer and Vishny 1998; Lindseth 2005; Pakuscher 2012; Evans 2012). Currie and Goodman (1975).took a similar approach when they addressed judicial review of agency action. A contrasting strand of literature addresses international comparative experience. For example, Cohen and Spitzer (1996) applied rational choice analysis to the issue of deference as a key element in the functioning of administrative justice systems. Empirical analysis of administrative adjudication includes studies of the reasons for choosing between administrative courts and other institutions (Diplock 1974; Stephenson 2006; Halliday and Scott 2010**;** Amerasinghe 1982;); as

[1] Examples include the cases of Afghanistan, Argentina, Australia, Bahrain, Bangladesh, Brazil, Brunei, Bhutan, Cambodia (Kampuchea), China, Colombia, Democratic Republic of Vietnam, East Timor, Germany, India, Indonesia, Italy, Japan, Jordan, Kazakhstan, Laos, Lebanon, Malaysia, Maldives, Mongolia, Morocco, Nepal, New Zealand, Oman, Pakistan, People's Republic of Korea, Philippines, Qatar, Republic of Korea, Saudi Arabia, Singapore, Solom, Spain, Sri Lanka (Ceylon), Syria, Taiwan, Tajikistan, Thailand, Turkmenistan, United Arab Emirates, United States, Uzbekistan, Vanuatu and Yemen (Arab Republic of Yemen).

well as studies of administrative courts' deference (Miles and Sunstein 2006; Masur 2007). These studies include analysis of the expansion of American administrative law and the convenience of having specialized bodies to deal with it (Berle 1917); analysis of administrative courts in Colombia (Gibson 1943); analysis of the role of administrative courts in agency performance (Pierce 1989); analysis of the relationships between congress, executive, and judiciary (Rhodes and Calabresi 1992); analysis of the performance of administrative courts and their role in controlling agencies (Lewis and Birkinshaw 1993); analysis of the relationship between courts and agencies (Craig 1994); analysis of the performance of specialized courts (Damle 2005); analysis of the relationship between administrative courts and policy-making (Koch 2005); analysis of the role of the adversarial model in administrative tribunals' behavior (Guinn 2007); and analysis of specialized courts in Indonesia (Bedner 2008). Likewise, researchers like Miles and Sunstein (2006) and Peter Strauss (2008) have studied decision-making and extra-legal influence on case outcomes in administrative justice.

Additional comparative studies include Adler (2003), which addressed the relationship between internal and external mechanisms as necessary for the study of administrative justice approach as part of a broader legal partner paradigm. Ginsburg (2010) called for greater attention to comparative administrative law as a feature of unwritten constitutions. Garoupa and Mathews (2014) developed a theory to explain cross-national variation in administrative law doctrines and practices. Asimow (2015) developed classifications of systems of administrative adjudication applicable to systems around the world. Two edited volumes, *Administrative Justice in Context* (Adler 2010) and *Comparative Administrative Law* (Rose-Ackerman and Lindseth 2010),present a broad overview of contemporary research of administrative justice, including historical perspectives, typing or case study, processes of decision making, and the factors that influence

them or the relationship between the public and private spheres, the constitutional nature of administrative justice, and judicial independence in administrative matters.

In spite of new directions in the study of administrative justice, no existent research has addressed the creation or design of administrative courts. While a number of studies analyze the design of administrative courts in relation to legal tradition, and a broad literature has addressed the creation of other types of courts, for example constitutional courts, none have created a theory of the political circumstances that prompt a legislature decide to create an administrative court, as the current study does. While administrative courts resemble general courts and even constitutional courts, their particular relationship to government functioning make them different. Administrative courts only review decisions made by officials and agencies at the request of affected individual(s), corporation(s), or group(s), and this distinction directs the debate of administrative courts' creation. Hence, conditions that lead to their creation differ from other types of courts.

Administrative courts have a dual purpose: i. redress for individuals and/or corporations and ii. the promotion of better standards of public service and administration. This dissertation undertakes analysis to reveal associations between various elements and courts' successful attainment of both redress and improvement of government behavior. As Ginsburg (2000) says of this second function, "administrative law seeks to manage the risk that agency behavior will diverge from the preferences of the public or other political institutions" (Ginsburg 2000; Gersen and O'Connell 2009). That is, legislatures have to delegate the execution of the laws they enact to the executive branch, which intrinsically creates concern about appropriate execution. The policy preferences of bureaucrats within the executive branch may often differ from those of

political leaders (Ferejohn and Spiller 1992; McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1999).

Mechanisms for reducing agency costs include hiring screenings, monitoring mechanisms and disciplinary procedures (Ginsburg and Posner 2010). Legislatures may also use administrative procedures to delegate some monitoring responsibility to those who have standing before an agency creating basis for judicial review (McCubbins, Noll, and Weingast 2007). Such procedures include the operation of administrative courts, which monitor the performance of the executive branch agents. The ostensible goal of administrative courts is to control agency acts or performance by the enforcement of administrative procedures, acting as an instrument of political control of bureaucracy (McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1987). By creating a judicially enforceable procedural right, politicians decentralize the monitoring function to their constituents, who can file suits to inform politicians of bureaucratic failure to follow instructions (Ginsburg 2000). The fulfillment of these purposes requires administrative courts to decide specific cases in which one of the parties is the government, acting as problem-solvers, and working like a fire alarm system to allow courts to monitor agency performance and create incentives so that bureaucrats do not harm citizens (Hertogh 2001; McCubbins and Schwarts 1984).

The common law tradition and the French law tradition have different approaches to creating administrative courts, with different means of fulfilling their mission. Like general or constitutional courts, in addition to these two broad distinctions, administrative courts vary in their approach to ensuring judicial independence and level of specialization. The creation of many specialized administrative tribunals, even in common law countries such as England (Longley and James 1999), the United States (Baum 2011), and India (Datar 2006) have

accompanied the evolution of administrative justice. This dissertation addresses the conditions under which legislators typically create administrative courts and the design elements they implement according to these conditions.

Finally, administrative courts ideally influence agencies through their interpretation of relevant constitutional requirements, through their interpretation of statutory procedural requirements and through the atmosphere they create through review functions (Strauss 2002). Which institutional design and legal rules allow such influence?

In order to perform an empirical analysis to answer the questions outlined above as to the political origins of administrative courts, their design origin, and their efficiency as devices to control government action, this dissertation analyzes Mexico's 31 states and its federal district as a natural experiment. Mexican state legislatures have created 30 administrative courts in the last half century, creating the first in 1974 and the most recent in 2013.

The pattern of creation suggests that political factors might have influence in a legislature's decision to create administrative courts. All but two of Mexico's states and the Federal District have created an administrative court; 65% of these were created after 1989, a significant year in politics in that the predominant political party in Mexico, PRI, lost power for the first time at the state level. While PRI retained power in seven of the states that have created administrative courts since 1989, it also retained power in the two states with no administrative court, Coahuila and Puebla.

The design of Mexican administrative courts varies in several characteristics: the branch to which the court belongs, the type of appointment mechanism, the judges' term in office, and the type of procedural rules regarding access, monetary liability, and enforcement. Most Mexican administrative courts were created as new specialized courts. However, a number have

subsequently become part of electoral or general courts. Administrative courts created before 2000 typically exist within the executive branch, with governors nominating judges whose term lengths may be shorter than the governors' own. More recently, legislators have placed administrative courts in the judicial branch, prevent governors from monopolizing judges' nominations, and set judges' term lengths longer than their appointers'. This variation supports this project's empirical analysis of different cases with different political party compositions, timings and designs between Mexican states.

The variance within creation timing, design, and effects over judges' performance in the Mexican case prompted the adoption of different methods (quantitative and qualitative) to maximize the analytical leverage of the study. Since the analysis seeks to explain variation in the creation of administrative courts and behavior towards agencies across the Mexican states and over time, the database includes empirical data from state legislatures, state constitutions, and regulations from 1974 to 2013 as well as Mexican local administrative courts decisions, including the political party composition of 14 legislatures' periods in each one of the 31 Mexican states from 1974 to 2013. The dataset also includes year of creation of the court, branch to which the court belongs, type of selection of judges' in the court, the existence of guarantees of tenure, standing provisions, monetary liability courts' powers, and courts' enforcement capacities. The revision of local constitutional provisions establishing the existence and organization of administrative courts as well as every statute regulating administrative courts in Mexico supplied this data. Since several of these statutes have been amended over time, the data includes analysis of a total of 547 statutes (Annex I includes the complete list of revised constitutions and statutes).

Through the assembly of an array of empirical data, this dissertation contributes to advancing explanatory propositions in the field of comparative sub-national judicial politics and to enhancing the analysis of administrative courts across states and within individual states. Researchers addressing administrative justice in other countries with a federal system, like Argentina or Brazil, will find this study of particular utility. This research also contributes to Positive Political Theory (PPT) by analyzing the interaction among the three branches of government in the creation and design of administrative courts at the local level.

Existent studies of Mexican courts have focused on federal civil courts, see for example (Fix-Fierro 2003); and none has addressed administrative courts. Studies of state level courts have focused on civil courts (Caballero Juárez and Concha Cantu 2001; Ingram 2012 and 2013).[2] Further, studies of Mexican courts have typically employed qualitative methods, yielding a dearth of explanatory propositions. A number of studies published in Spanish focus on administrative justice in Mexico, covering subjects such as historical analysis (Fix-Zamudio 1983), administrative courts specialized jurisdiction (Aguirre 1999), and changes in the administrative courts in different countries; including Mexico (Moderne 1999; Strauss 1991);. Others have sought to characterize different models of organization of the administrative jurisdiction (Armienta 1990; Braiban 1999; Gonzalez 1995) or compared administrative courts and their treatment of regional groups in Mexico and elsewhere, for the purpose of establishing benchmarks of comparison perspective (Baldi 1999; Bordalí 2006; Sosa 1999), but none have analyzed the variance evident in Mexican administrative courts, leave a whole in the understanding of the Mexican case this dissertation seeks to fill.

[2] Jose Antonio Caballero Juárez and Hugo Concha Cantu (2001) performed a diagnostic on civil justice in all Mexican states; Mathew C. Ingram performed two studies (2012 and 2013) of the relationship between civil court performance and judicial budgets and the influence of ideology and judicial council reforms over the design of courts in new democracies.

Chapter I tests two hypotheses about the political factors that influence the creation of administrative courts in Mexican states. The first hypothesis highlights the legislatures' majoritarian political party's uncertainty that it will retain power. The second hypothesis examines the importance of the degree of control a political party has over its members. Chapter II analyzes legislative decisions regarding independence and institutional capacities of administrative courts. Chapter III analyzes legislatures' decisions to incorporate administrative jurisdiction, whether in a new specialized court or in an existing court. Chapter IV analyzes the specific characteristics of administrative courts among the different states and the different outcomes these characteristics might have when interacting with the executive branch in order to discover the relationship between administrative courts and local governments. One of the purposes of this chapter is to analyze the presumption that administrative courts should provide not only individual redress but produce some form of policy impact. Finally, Chapter V performs an empirical analysis in order to analyze the influence of the design characteristics developed in previous chapters over actual administrative courts' decisions.

Chapter I. The origin of Mexican state-level administrative courts

Most of the current literature regarding the creation or empowerment of courts posits that governments are more likely to create or strengthen courts in times of political fragmentation or decline of power of a predominant political party within a legislature than in times of greater stability. However, the distinctive function of administrative courts suggests that additional political motivations may contribute to the likelihood of their creation. Since administrative courts monitor executive branch performance, a model explaining their creation should also take into account the interaction of legislatures with the executive's branch political party. Further, the coincidence or difference between the political party of the executive branch and the legislatures' majority or the previous executive branch political affiliation should have a significant effect on the creation of an administrative court. Using the Mexican case, in which 30 courts have been created in different time periods I illustrate why current theories explaining the creation and evolution of courts are not sufficient to explain the specific case of administrative courts emergence. After a fixed effects regression, I show that in the case of Mexico the unique variable explaining the emergence of administrative courts is the existence of a governor having a different political party affiliation from the previous one: non-PRI governors.

I. Introduction

Several factors, including political ones, can influence legislatures' decisions to create or strengthen courts. Scholars often posit that political parties' incentives explain legislators' motives, suggesting that legislatures create or empower courts with the purpose of obtaining

future benefits. However, no theory or hypothesis has emerged in the literature providing a consistent explanation for the timing of the legal decision to create administrative courts or the actual creation of such courts. My discussion in this section encompasses the question as to what motives prompt the creation of administrative courts, and relates directly to theories explaining the emergence of other kinds of courts.

Research regarding administrative courts has principally examined the strength and independence of these courts without examining their creation. Studies of the emergence of general courts or constitutional courts, which focus on cost-benefit analysis or political rationales, thus provide context for this discussion of administrative courts. Research that focuses on cost-benefit analysis highlight the expectations of winning elections repeatedly as a factor influencing the degree of independence of courts, see for example (Landes and Posner 1976; Ramseyer 1994). Research on political rationales in relation to courts uses political fragmentation and uncertainty to explain the emergence of independent courts, see for example (Laryczower, Spiller and Tommassi 2002; Chavez 2004; Rios-Figueroa 2007). A number of these studies use the "insurance model" first proposed by Ginsburg (2003), which posits that when legislators from a specific political party suffer or foresee a decrease in their strength they create courts.

This chapter will incorporate executive branches' political affiliations, which prevailing literature concerning the creation of courts has omitted. Mexican state legislatures have created 30 administrative courts. Two characteristics make Mexico an unusual case. First, states' legislatures have created these courts over the course of four decades, an unusually long period. Second, some legislatures amended their state constitutions to require administrative courts, but let years elapse after the enactment before creating them. Thus Mexico offers an unusual number

of cases across an unusual length of time to measure the influence of the strength of the most powerful political party in Mexico, the Revolutionary Institutional Party (PRI). The finding that both constitutional amendments that call for administrative courts and the actual establishment of such courts both frequently coincide with PRI's loss of power, and that this holds true over four decades, thus is particularly robust. This is true in spite of the variety of circumstances—Chihuahua, for example, amended its constitution to call for an administrative court right at the time that PRI lost its majority in the legislature, while Michoacan, Zacatecas, and Puebla created such courts at a time when PRI lost control of the executive branch.

In order to analyze the effect of political power and its interaction between the legislative and executive branch, I tested empirically two hypotheses about the political factors that influence the creation of administrative courts in Mexican states. The first hypothesis derives from the insurance model, which highlights the legislatures' majoritarian political party's uncertainty as the key factor influencing creation or empowerment of general or constitutional courts. According to this model, legislatures create administrative courts when the majority party's hold on Congress is uncertain.

The second hypothesis derives from a simpler model I created to explain the specific emergence of administrative courts, which I named the dominion model. It examines the importance of the degree of control a legislature's majoritarian political party has over the executive branch. When legislators and executive branch officers share political party affiliation, the concurrence of ideology and hierarchical structures provides legislators with cheap political mechanisms of control over executive branch officers. However, without such mechanisms, legislators seek other mechanisms of control, such as creating administrative courts (Ginsburg 2000). Therefore, legislatures' majoritarian political parties with no political capacity to control

bureaucrats will have a higher preference for creating or strengthening administrative courts. The ascendance of a different political party gives legislatures motivation to create administrative courts as a mechanism to control public officers' behavior.

While the insurance model applies to situations in which legislatures delegate power to bind their own branch (and perhaps another branch as well), the dominion model applies to a situation in which legislatures delegate power to courts to control a different branch. While the insurance model explains the creation and the empowerment of general courts, the dominion model applies better to administrative courts, because administrative courts control only the power of the executive. While the insurance model seeks to explain why legislators seek check their own power through independent judiciaries, the dominion model seeks to explain why legislators prefer administrative courts to other political mechanisms to control the executive branch.

Section II applies both the dominion model and the insurance model to the creation and strengthening of courts. Section III describes the current structure of administrative courts in Mexico. Section IV describes states governors and legislatures political party compositions over time. Section V describes the empirical analysis including hypotheses, data, and models. Section VI sums up the empirical findings.

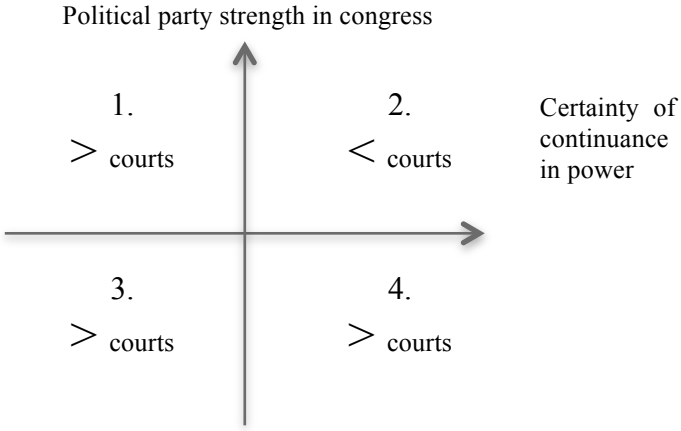
II. The creation of courts

Scholars have developed several models to explain the emergence of independent courts. Landes and Posner developed straightforward rational choice analysis of the question in 1976, arguing that when a ruling party expects to win elections repeatedly, the likelihood of maintaining

judicial independence is low. However, a ruling party will support judicial independence in order to limit the winner of the next election when it does not expect to retain power (Landes and Posner 1976). Expanding on this model, Ramseyer argues that judicial independence may be a matter of electoral exigency. His model suggests that states with alternating parties may or may not maintain independent courts, but that states where one party regularly wins elections generally do not maintain independent courts (Ramseyer 1994). Other analyses suggest that political fragmentation drives independent judiciaries (Laryczower, Spiller, and Tommassi 2002, Chavez 2004, Rios-Figueroa 2007).

While these models develop analytical tools to predict courts' independence, they have limited capacity to predict the creation of courts; the insurance model enters this gap with a model to predict the creation of constitutional courts, suggesting that congresses may choose to create or strengthen courts when facing future political changes. Ginsburg (2003) posits that legislators who create or strengthen courts incur a short-term cost in exchange for the long-term security of a strong judiciary, noting that legislators have a stronger incentive to pay this cost if they anticipate losing power. Because of this, "explicit constitutional power of and access to judicial review will be greater where political forces are diffused than where a single dominant party exists at the time of the constitutional design" (Ginsburg 2003). In this way the insurance model incorporated uncertainty as a variable of the analysis of the emergence or strengthening of courts. In this it solved the paradigmatic case of strong political parties creating or empowering courts to bind them. Figure 1 shows the basic argument of the insurance model:

Figure 1. Insurance model



Axis x represents the degree of certainty a political party has of continuing in power. At the extreme right, a party would have 100% certainty. At the extreme left, a political party would have no certainty. Axis y represents the strength of the political party in congress, measured by its number of seats. At the extreme top a political party would have all of the seats in congress. At the extreme bottom it would have none. Since courts can provide mechanisms of protection for minorities or weak political parties, such political parties would always prefer more or stronger courts. Accordingly, the insurance model predicts that regardless of the certainty of continuance in power, weak political parties would always prefer more or stronger courts (squares 3 and 4), but only uncertainty as to their continued strength leads a strong party to prefer more or stronger courts.

Scholars have used the insurance model to explain several cases of stronger judiciaries. Finkel used it to examine the 1994 constitutional amendment that empowered the Mexican Supreme Court as a judiciary capable of checking the power of the president and PRI, the ruling political party. This reform rearranged several institutional characteristics of the Supreme Court of Justice in Mexico, increasing the independence of the judiciary. She argued that the new Supreme Court was "designed to protect a weakening ruling party operating in an increasingly

insecure political arena" (Finkel 2005, 88). Later, Aydin (2013) identified contexts in which the insurance model may have more or less power to explain judicial independence as a consequence of political competition showing different trends across advanced and developing democracies.

However, not all courts review legislators' decisions. In fact, legislators consistently look at courts as mechanisms of control, but not necessarily of their own actions. They may seek to control citizens, political opponents, or bureaucracy (Ginsburg and Moustafa 2008). Thus the target may be from their own branch or another branch, and their delegations self-binding or other-binding (Alter 2008).[1] Self-binding delegations permit courts to review legislatures' decision-making authority, while other-binding roles permit courts to review *other* bodies' decision-making authority. The insurance model provides an analytical tool to predict the creation of self-binding delegations such as constitutional courts.[2]

By contrast, administrative review through which courts review the executive branch decision-making is an other-binding delegation. "Actors who write the law (legislatures) are using judges to monitor the actors that implement the law" (Alter 2008, 46). Since such delegations have different purposes, legislators' decisions to create or empower courts must be attached to the function of the court. Therefore, legislators' decision to create an administrative court implicates their decision to control the agents in charge of implementing the law. Moreover, we should acknowledge the motivations behind this control and the possible mechanisms of control that can achieve such purpose.

[1] Regarding courts' functions, Alter (2008) offers a typology distinguishing four types of powers, which can coincide in a single judiciary. According to such classification most court functions fall into four categories: dispute-adjudication authority, enforcement authority, administrative review, and constitutional review. Each role determines whom the court is going to control. A court with the powers of constitutional review or enforcement authority controls everyone including the legislature itself. A court with administrative review or dispute-adjudication authority powers controls the executive branch (including bureaucrats) and citizens.

[2] The insurance model explains why legislatures would create strong courts even though courts check legislatures' own power.

From a theoretical point of view the judicial resolution of conflicts between government and citizens has two functions. The first is to address citizens' complaints (by determining if the agency has acted according to the law).[3] The second is to act as an external monitoring system to detect and punish illegal actions committed by bureaucrats. Several scholars have identified this second function in administrative proceedings as a corrective mechanism or a fire alarm system in which congresses monitor agencies' actions (McCubbins and Schwartz 1984; Hertogh 2001, 2010; Halliday 2004; Ginsburg 2008; Ginsburg and Posner 2010). According to this second function, administrative courts exist primarily to address a principal-agent problem congress and citizens have with bureaucrats. This problem results from the legislative delegation to agencies (Aranson, Gellhorn, and Robinson 1982; Weingast 1983; Cook and Wood 1989, Kiewiet and McCubbins 1991; Hammond and Knott 1996; Spence 1997; McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1999, 2007). Congresses, executives, and citizens expect bureaucrats to perform their duties in the best manner they can. However, bureaucrats' interests may not align with these other actors.

Constitutional architects use several mechanisms to overcome the principal-agent problem. There are informal mechanisms such as ideology or hierarchy and formal mechanisms such as congressional oversight and courts. Through internalizing ideology, congresses and governments rely on social norms that instill in agents the sense of being part of a nation, a government, or a political party. Politicians try to convince agents to internalize the preferences of the principal through ideology and professional indoctrination. Hierarchy mechanisms rely on pure legal rules; in so doing they impose monitoring as a cost on the agent's activity. By

[3] The judiciary "checks whether representatives of the state have followed the procedural devices intended to safeguard the rule of law" (Hayo and Voigt 2010).

advancing loyal agents and punishing disloyal agents, politicians provide bureaucrats with an incentive to perform a certain way (Ginsburg 2000).

Formal monitoring delegation can be divided into legislative oversight and third party oversight. Legislative oversight includes inquiries into violation of the executive mandates made by the legislative branch itself (McCubbins and Schwartz 1984; Kiewiet and MacCubbins 1991; Martin and Vanberg 2004; Kim and Loewenberg 2005; Carroll and Cox 2012). Third party oversight relies on external mechanisms to monitor delegation such as courts. Congresses use administrative procedures to delegate some monitoring responsibility to those who have standing before an agency, creating a basis for judicial review (McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 2007). Some authors classify this mechanism as ex-post since courts control agency decisions after the fact (Shapiro 1969). In this regard, not only congresses but also executives' heads will seek to control bureaucrats. On the one hand congresses may want the whole executive branch, including presidents or governors as well as bureaucrats, to comply with administrative law. On the other hand presidents and governors would be interested in supervising their employees, the bureaucrats, to enforce compliance with administrative law. Therefore, both congresses and executive branch heads may be classified as principals in a principal-agent relationship.

Administrative courts differ from ideology and hierarchy in that the latter mechanisms do not require the fulfillment of specific procedural rules or the intervention of a third party in the relationship between the principal and the agent. Hence, they can be powerful and inexpensive control mechanisms. Consequently, legislators will only favor administrative courts as a means of controlling the executive branch if ideology and hierarchy lose their power to exert control, or become expensive.

Based on the insurance model and taking into account the specific functions of administrative courts, this chapter will present a model for the creation of administrative courts, as other-binding delegations, which I named the "*dominion model.*" This model has two assumptions: i) that legislatures create courts to control the executive branch and ii) that there are cases of convergence between bureaucrats and party members. It posits that congresses may choose to create or strengthen administrative courts when facing high costs to control bureaucrats by political mechanisms such as ideology or hierarchy. When the executive branch and the legislature majority have different party affiliations, political party mechanisms to control bureaucrats become non-existent, and legislators seek to create or strengthen administrative courts'. Similarly, when a new governor who does not share the previous governor's party affiliation comes to power, the new governor's party will support administrative courts as a means to control bureaucrats appointed by his or her predecessor.

The following figure shows the differences between the dominion model and the insurance model.

Figure 2. Differences between the insurance and the dominion model

Insurance model

	Strong in legislature	Not strong in legislature
Same Legislature/Executive-Executive	a. Same-Strong < administrative courts	c. Same-Not strong > administrative courts
Different Legislature/Executive-Executive	b. Different-Strong < administrative courts	d. Different- Not strong > administrative courts

Dominion model

	Strong in legislature	Not strong in legislature
Same Legislature/Executive-Executive	a. Same-Strong < administrative courts	c. Same-Not strong < administrative courts
Different Legislature/Executive-Executive	b. Different-Strong > administrative courts	d. Different- Not strong > administrative courts

As this chart shows, the insurance model would predict that regardless of the governor's political party, the strength of that party within the legislature is inversely correlated with the

probability of creating administrative courts. The dominion model, however, emphasizes the importance of a party's ability to control the executive branch. Assuming the convergence between bureaucrats and party members, the dominion model would predict that regardless of the strength of a political party within a legislature, the existence of a governor with a different political party (compared to the legislature's majoritarian political party or the previous governor's political party) incentivizes the legislature to create administrative courts. Contrary to the insurance model, the dominion model foregrounds alternation between the party affiliation of the legislative majority and that of the governor. Regardless of the strength of a political party within a legislature, the higher the coincidence between governors' political party with the legislature or the previous governor, the lower its preference for administrative courts would be.

Administrative courts, several other different types of courts, are created by constitutional incorporations. Therefore their creation evolution may conform to theories of constitutional creations or constitutional amendments of rights. One of the explanations of institutional change and design is diffusion, which suggests that a country's geographic neighbors may influence its decisions. This chapter's analysis of the predictions of the insurance and the dominion model will control for such an effect by testing the influence of the existence of administrative courts in the proximate geographical states.

III. Administrative courts in Mexico

Mexico's first administrative court predates its independence from Spain. Established in the first quarter of the sixteenth century, the Royal Hearings of Indias provided a forum for citizens to appeal any decision of the Spanish government. Almost 300 years later Mexican independence in

1810 disbanded the court, but in 1812 Mexico incorporated specialized administrative judges into its tax agencies. These judges were part of the executive branch until 1824, when the Mexican Constitution established administrative courts as part of the civil courts, making them part of the judicial branch. Later, the centralist model of these specialized judges reappeared within the executive power. In 1853 the government created an administrative court through the Administrative Justice Statute. This statute created an administrative court with the main purpose of solving tax disputes. Three years later the Mexican Constitution of 1857 reinstated administrative justice as part of the judicial branch, giving it the power to institute the "amparo" trial.[4] This system lasted until in 1936 when the government established the Federal Administrative Court. After this, subsequent amendments to the Federal Constitution established the possibility of the existence of local administrative courts. The aggrandizement of executive power and the necessity of specialized administrative courts led to subsequent amendments of constitutional article 116 in 1988 and 122 in 1996, which regulate the current states' administrative courts.[5] However, even before the introduction of local administrative courts in the federal constitution in 1988, several states created their own administrative courts; the first was the Tamaulipas' administrative court, created in 1951.

Currently the Mexican state consists of a federation of the Federal District and 31 states. Each state has administrative jurisdiction, as does the federal government. At the federal level, citizens can challenge actions of federal executive authorities through nullity trials while at the

[4] *Amparo* writ guarantees individual constitutional protection. Among the judicial mechanisms for enforcing the Mexican Constitution, the *amparo* writ is by far the most commonly used since it is the only mechanism available for citizens to challenge unconstitutional governmental actions. The *amparo* writ is also the most complex of these mechanisms since it contemplates a series of procedural instruments, each one with its own characteristics. There are two types of *amparo*: the direct *amparo*, which may be used to challenge final judgments and the indirect *amparo*, which may be used to challenge any illegal act of public officers.

[5] To learn more about the history of administrative justice in Mexico see (Lira-Gonzalez 2008).

local level citizens can challenge actions of local executive authorities, also through nullity trials. In their current form, administrative courts' proceedings include a hearing and the opportunity to show evidence. They allow administrative court judges to void agencies' decisions as unlawful if they do not comply with administrative rules.

The structure of the administrative adjudication system in Mexico includes a Federal Administrative Court, which is an autonomous specialized court.[6] Among the states' powers, Article 116 of the Mexican Constitution provides for the existence of local administrative tribunals to solve disputes between citizens and local governments. By recognizing the powers of state legislatures to regulate these tribunals' existence and design, the constitution enables these bodies to decide whether to create an administrative court.[7] In this regard, it is important to point out that before the recognition in the federal constitution of states' powers to create and design administrative courts, several states exercised such power by creating local administrative courts before 1988. Crucially, some Mexican state legislatures have enacted constitutional provisions that establish such administrative courts without immediately creating them. Moreover, neither Coahuila nor Puebla has created the administrative court for which their constitutions provide. On average, states established courts 3.3 years after amending their constitutions to call for them. The following table shows the lag between incorporation of a provision in the state constitution for each state in Mexico and actual court creation, the lag between the creation of the first

[6] Article 73 XIX-H of the Federal Constitution provides for the review of federal administrative action. This administrative court does not supervise in any manner the performance or decisions of local administrative courts and this court is not part of the judiciary.

[7] Article 116. V establishes that both the state constitutions and state statutes shall provide for autonomous administrative courts under whose jurisdiction the controversies between state public administrations and private individuals will be solved. Such constitutional and legal provisions shall regulate the administrative courts' management as well as the applicable legal procedures and the system of appeals against the courts' resolutions.

administrative court in 1951 and actual court creation, as well as the constitutional article that calls for creation in each state.

Table 1. *De jure* and *De facto* creation of administrative courts in Mexico[8]

State	*De jure* creation	Constitutional article	*De facto* creation	Lag *De jure*- *De facto*	Lag *De facto- 1951*
Tamaulipas[9]	1951	Tax Code	1951	0	0
State of Mexico	1970	100	1986	16	35
Veracruz[10]	1975	38	1975	0	24
Sinaloa	1976	109bis	1976	0	24
Sonora	1977	64.XLIIIbis	1977	0	25
Hidalgo	1979	113	1979	0	28
Chiapas	1981	29.XVII	1989	8	37
Jalisco	1983	39	1983	0	32
Guanajuato	1984	82	1985	1	34
Queretaro	1985	63.XIIC	1985	0	34
Guerrero	1987	118	1987	0	36
Yucatan	1987	30.VII	1987	0	36
Baja California	1988	55	1996	8	37
Colima	1988	77	1989	1	44
Durango	1988	7	2004	16	52
Morelos	1989	40	1990	1	38
Nuevo Leon	1991	63.XLV	1991	0	39
San Luis Potosi	1993	71bis	1993	0	41
Baja California Sur	1994	64.XLIV	2004	10	53
Chihuahua	1994	64	2013	19	63
Campeche	1996	82.1	1996	0	45
Tabasco	1996	36	1997	1	45
Zacatecas	1998	112	2000	2	48
Aguascalientes	1999	51	1999	0	48
Oaxaca	2000	59.XX	2005	5	54
Nayarit	2001	47.XXXVI	2002	1	51
Tlaxcala	2001	82	2002	1	51
Quintana Roo	2003	106	2004	1	53
Coahuila	2006	135	-	8	-
Michoacan	2006	95	2006	0	56
Puebla	2011	12.X	-	3	-

As table 1 shows, some states established courts almost immediately after enacting laws that call for them, and some states took many years – in three states it took more than fifteen

[8] All dates were obtained from the revision of the State Constitutions and actual legislations in each state. Other dates were obtained from Ruiz-Perez (1997).

[9] Some antecedents of a tax court in Tamaulipas go back to 1951, but no documents support the actual design and structure of the court until 1977.

[10] Some researchers consider 1989 to be the year of the creation of Veracruz's administrative court. However according to Law Number 84 enacted on December 30 of 1975, Veracruz's court functioned as a tax court. Consequently, for the purposes of this research the tax court placed some limitation on executive action, and its initial establishment is relevant to the current research.

years from *de jure* court establishment to establish actual courts. In the extreme, Puebla did not enact *de jure* establishment of a court until 41 years elapsed after the incorporation of an administrative court in the State of Mexico, and has not yet created the court.

Regarding the lag found between the incorporation to the constitution and the actual creation of a court, it is interesting to notice that across states the legislature majority required for the approval of the constitutional incorporation is larger than the one required to approve its actual creation through the enactment of a law. While the enactment of the laws requires only the approval of the majority of legislators in every state, most states require the approval of two thirds of the total number of legislators plus the majority of the municipalities to amend the constitution, although the proportion of legislators, and requirement for the approval of municipalities varies. Therefore, the gap between the incorporation of an administrative court into the constitution and its actual establishment is particularly enigmatic, since legislators experience a high barrier to a constitutional amendment and a low barrier to enact the law. Table 2 shows each state's constitutional amendment mechanism at the time of amendment calling for an administrative court.

Table 2. Constitutional amendment rules when administrative courts were incorporated to the state's constitution

State (Incorporation year)	State constitutional article	Proportion of legislators requires to approve	Proportion of municipalities required to approve
State of Mexico (1970)	148	2/3 of total legislators	50% +1 of municipalities
Veracruz (1975)	84	2/3 of total legislators by two different legislatures	None
Sinaloa (1976)	159	2/3 of total legislators	2/3 of municipalities
Sonora (1977)	163	2/3 of total legislators	Majority of municipalities
Tamaulipas (1977)	165	12 legislators	None
Hidalgo (1979)	158	2/3 of total legislators	2/3 of municipalities
Chiapas (1981)	95	2/3 of present legislators	Majority of municipalities
Jalisco (1983)	117	2/3 of total legislators	Majority of municipalities
Guanajuato (1984)	143	2/3 of total legislators	Majority of municipalities
Queretaro (1985)	39	3/4 of total legislators	Majority of municipalities
Guerrero (1987)	125	2/3 of total legislators	2/3 of municipalities

Table 2, continued

Yucatan (1987)	108	2/3 of total legislators	None
Baja California (1988)	112	2/3 of total legislators	Majority of municipalities
Colima (1988)	130	2/3 of total legislators	Majority of municipalities
Durango (1988)	182	2/3 of total legislators	Majority of municipalities
Morelos (1989)	147	2/3 of total legislators	Majority of municipalities
Nuevo Leon (1991)	150	2/3 of total legislators	None
San Luis Potosi (1993)	138	2/3 of total legislators	3/4 of municipalities
Baja California Sur (1994)	166	2/3 of total legislatures	None
Chihuahua (1994)	202	2/3 of total legislatures	20 municipalities (50% population)
Campeche (1996)	130	Majority of total legislators	Majority of municipalities
Tabasco (1996)	83	2/3 of present legislators	Majority of municipalities
Zacatecas (1998)	164	2/3 of total legislatures	2/3 of municipalities
Aguascalientes (1999)	94	2/3 of total legislators	Majority of municipalities
Oaxaca (2000)	141	2/3 of total legislators	None
Nayarit (2001)	131	2/3 of total legislatures	2/3 of municipalities
Tlaxcala (2001)	120	2/3 of total legislators	Majority of municipalities
Quintana Roo (2003)	164	2/3 of total legislators	Majority of municipalities
Coahuila (2006)	196	2/3 of present legislators	Absolute majority of municipalities
Michoacan (2006)	164	Absolute majority of legislators	Majority of municipalities

These lags present the question, why would a legislature amend its constitution, given the high costs required, and then not enact the change? While this research focuses on whether political variables influenced the *de jure* and *de facto* creation of administrative courts in Mexico, this chapter dedicated a section to analyzing these lags.

IV. Politics at the local level in Mexico

Each of Mexico's 31 states has a legislative, executive, and judicial branch. Neither legislators nor governors can be elected more than once. Legislators—numbers vary by the state—hold

office for three years, while governors serve for six.[11] Governors oversee the executive branch, propose constitutional amendments, and initiate legislation.

Following the Latin-American tradition, Mexican states give concentrated powers to the executive branch (Cheibub, Elkins, and Ginsburg 2011, 3). Both researchers and citizens perceive governors as the political leaders of the states, since they usually determine not only political positions but also legislation contents (Smith, 1979, 222). When the same party had control of both branches, as Hernandez-Rodriguez (2003) states, "subordination to the governor was virtually absolute, and resulted in a higher control of congresses" (Hernandez-Rodriguez 2003, 102). Such subordination can be attributed to several factors, such as the governor's serving for twice as long as legislators; governors' critical control over candidate selection for local deputies; the legal inability of legislators to get reelected;[12] and governors' available resources, such as money and staff for campaigning. The power of managing public positions to reward loyalties and preserve political control of the state also gives governors' political influence.

Several political parties have composed Mexican states' legislatures. However, only three political parties have won important majorities within local legislatures and governors' offices: the Party of the Institutional Revolution (PRI), the National Action Party (PAN), and the Party of the Democratic Revolution (PRD).[13]

[11] Not all legislators and governors are elected in the same year.
[12] As Langston (2010) points out, it's unusual for a democracy to give the executive so much power over legislators.
[13] It is important to note these political parties have at times made alliances with smaller political parties.

PRI was founded in 1929 and has dominated the Mexican political arena since then.[14] It was created after the Mexican Revolution period (1910–1929) to provide the country with a stable political force. Generally considered centrist, PRI's established party principles call for a social and democratic state, based on an effective and constitutional order, which defends human rights and gender equality and guarantees security to every person and provides legal certainty over their property. Principle 9 in the official document establishes PRI's commitment to eliminate corruption and impunity, promoting transparency, accountability, and prompt access to impartial justice in every sphere of the public life (*Partido Institucional Revolucionario* 2013).

PRI's internal rules have been famous for their effective vertical control over successors (Langston 2001). At the federal level, before 1996 PRI Presidents nominated their own successors, governors and senators, directly. At the state level, PRI governors nominated candidates for municipal presidents and local deputies. Although the party abolished this power formally in 1996, PRI governors continue to make such nominations.[15] Thus, PRI governors manage patronage and turnover of positions within government. The convergence between governments and party members has been especially important at the state level in which the overlap of personnel moving between party and local executive appointments has been notable (Langston 2010, 240). Further, in spite of some movement towards a looser control by the chief

[14] At the federal level, PRI was the hegemonic party in Mexico until 2000, when for the first time the president of Mexico was not affiliated with PRI.

[15] According to Langston (2001) before 1990 PRI statutes established that candidates were chosen in delegate conventions. Because statutes were ambiguous in how such delegates were chosen, party leaders possessed the power to write the rules to choose such delegates, as well as high influence to chose them, predetermining nomination outcomes (Langston 2001, 493). After 1996 statutes incorporated militants in nomination decisions and the direct influence of the President in nominations became less clear. However, formal rules did not matter much for PRI Presidents and presidential power over internal decisions did not changed after the statutes' amendment (Langston 2001, 503).

executive after the mid 1990s, very strong vertical control characterized the party through much of the period this research investigates.[16]

The second strongest political party, PAN, has won several state legislative majorities and governors' offices, and held the presidential office for 12 years. PAN was founded in 1939 and has been classified as a center-right political party. Principle 13 of PAN's official principles document establishes its support of responsible federalism, transparency, and honesty in public life. It is the authority's obligation to manage public resources in a responsible, transparent, and honest manner, while citizens must permanently monitor the use of such resources. The party platform calls for government institutions to guarantee that public policy transcends their election terms in order to give continuity and certainty to the nation (*Partido Accion Nacional* 2002).

Due to its internal rules PAN has been classified as a highly decentralized political party (Langston 2008, 152). As opposed to PRI, PAN selects candidates through district-level nominating conventions in which all of PAN's members can participate in the selection of the candidate. However, PAN governors also have used public positions to reward party loyalties (Hernandez-Rodriguez 2003, 109).

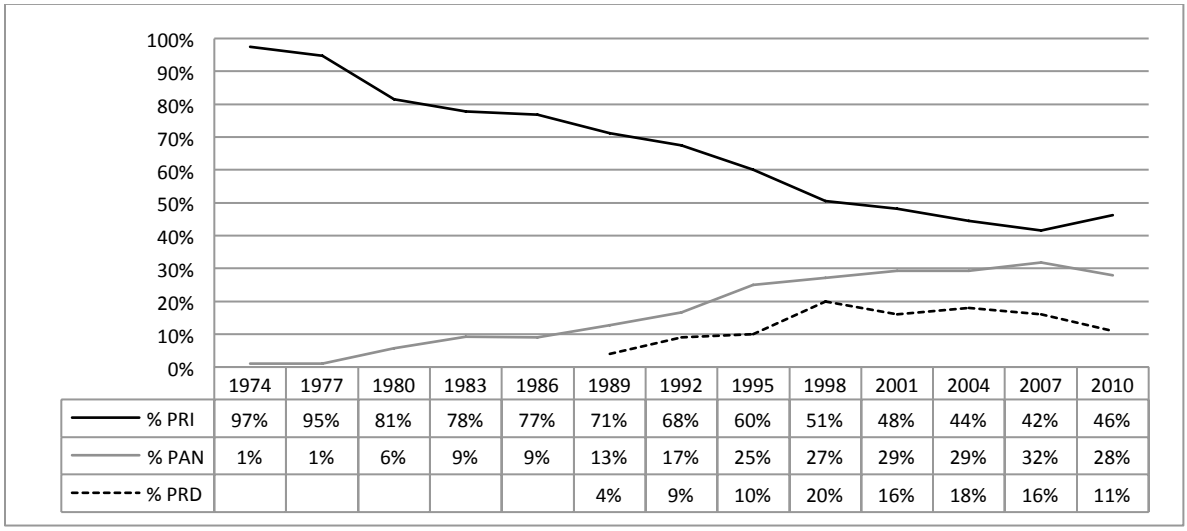
The third strongest political party, PRD, was founded in 1989. has never won a presidential election but is strong within the Federal District and some states. Originally created by PRI members who opposed the non-democratic and hierarchical structures of the majority party, PRD has been classified as center-left. Principle 6 of the PRD's official document establishes that PRD fights for Mexican workers, freedom, transparency, and union autonomy. It

[16] As Langston (2001) notes, the president's inability to guarantee electoral victories for his party's members after 1996 loosened the office's grip on party members: "Thus, if an individual politician refused to remain loyal when he or she was passed over for the nomination, there was no guarantee that other members of the party would not exit and run for another party, and there was no guarantee that the dominant party would win election" (Langston 2001, 509).

also references opposition to the closing of productive enterprises and unjustified firings (*Partido de la Revolucion Democratica* 2014). Like PAN, PRD is a decentralized party but PRD governors have rewarded party loyalties through public positions (Hernandez-Rodriguez 2003, 109). However, PRD holds primaries and permits all registered voters, regardless of party affiliation, to participate (Langston 2008, 158).

The political presence in the states of each political party depends on the time of creation of the party and on the specific state. Figure 3 shows the percentage of PRI, PAN, and PRD legislators in all Mexican states measured by the mean of the percentage of the political party in each state.

Figure 3. Mean of percentage of PRI, PAN and PRD in all Mexican states' legislatures



	1974	1977	1980	1983	1986	1989	1992	1995	1998	2001	2004	2007	2010
% PRI	97%	95%	81%	78%	77%	71%	68%	60%	51%	48%	44%	42%	46%
% PAN	1%	1%	6%	9%	9%	13%	17%	25%	27%	29%	29%	32%	28%
% PRD						4%	9%	10%	20%	16%	18%	16%	11%

As figure 3 reflects, the percentage of PRI at the state level has been generally high. Scholars who seek to understand this durability cite three likely explanations: i. PRI's vertical structure of command and control; ii. the PRI president's protagonist role as leader and arbiter of

political conflicts among members of the party; and iii. the PRI president's power to sanction party members for noncompliance with expulsion (Langston 2001, Magaloni 2003).[17]

Importantly for this research, none of the three parties has expressed aversion or predilection for the creation or use of courts, whether through statute or official party principles materials (*Partido Accion Nacional* 2002; *Partido Institucional Revolucionario* 2013; *Partido de la Revolucion Democratica* 2014). However, the three parties may differ in terms of their experiences with courts; therefore I used as the percentage of cases in which each party at the state level has lost a case before the Supreme Court from 1995 to 2009 a proxy to identify a possible bias towards or against courts.

Article 105, Section 5 of the Mexican Constitution gives powers to the Mexican Supreme Court of Justice to adjudicate cases between different branches and levels of governments, through a remedy called constitutional controversy. The Federation, states, municipalities, and the Federal District can initiate such controversies against general rules and acts enacted or performed by federal or local legislatures or governments.[18]

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[17] Langston's analysis of the the protagonist role of the President reveals that the design of the political party's rules determined the decrease of power of PRI (Langston 2001).

[18] Article 105. The Nation's Supreme Court of Justice shall hear, under the terms set forth by the Law, of the following matters: I.- Constitutional controversies, except for the ones referring to electoral matters and the previsions of Article 46 of this Constitution, arising between: a) The Federation and a State or the Federal District; b) The Federation and a Municipality; c) The President of the Republic and the Congress of the Union; the President of the Republic and any of the Houses of the said Congress, or, as the case may be, the Permanent Commission, acting as Federal bodies or as bodies of the Federal District; d) A State and another one; e) A State and the Federal District; f) The Federal District and a Municipality; g) Two Municipalities from diverse States; h) Two Powers of the same State, regarding the constitutionality of their actions or general provisions; i) A State and one of its Municipalities, regarding the constitutionality of their actions or general provisions; j) A State and a Municipality from another State, regarding the constitutionality of their actions or general provisions; and k) Two government bodies of the Federal District, regarding the constitutionality of their actions or general provisions. Whenever controversies should concern general legal provisions issued by the States or the Municipalities and contested by the Federation, or by the Municipalities and contested by the States, or in the cases in subsections c), h) and k) hereinbefore, and the resolution issued by 36 Political

According to official statistics provided by the Supreme Court of Justice, from 1995 to 2009 a total of 1,283 constitutional controversies were initiated and a total of 555 had an identifiable political party as a defendant. (The period represents available statistics as to constitutional controversies on the Mexican Supreme Court of Justice website as of 2009). In 186 constitutional controversies against PRI, the Supreme Court found against the party in 24 cases (13%). Among 266 constitutional controversies against PAN, the Supreme Court decided 30 against the party (11%). Among 33 constitutional controversies against PRD, the Supreme Court decided against the party eight times (24%). Although this is an imperfect measure and the numbers may reflect a selection effect, these statistics certainly suggest that no party's experience of constitutional courts molds its members' approach to administrative courts.

V. Empirical analysis

For the empirical analysis I assembled a dataset that includes the political party composition of 14 legislatures' three-year periods in each one of the 31 Mexican states from 1974 to 2013, the year each state passed an amendment calling for an administrative court, the year of actual creation, the branch to which the court belongs, approach to selection of administrative judges, the existence of guarantees of judicial tenure, standing provisions, monetary liability courts' powers, and courts' enforcement capacities. Several sources such as Electoral Commissions reports published after each election, legislature reports, and legislatures' papers provided the information as to the political party composition (Lujambio 2000); the remaining data reflects

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Constitution of the United Mexican States the Supreme Court of Justice should declare them null and void, such resolution shall have general binding effects when approved by the vote of a majority of at least eight Justices. In all other cases, the resolutions of the Supreme Court of Justice shall have binding effects only in respect to the parties of the controversy.

publicly available constitutional amendments and statutes. Since several of these statutes have been amended over time, the data includes analysis of a total of 547 statutes (Annex I includes the complete list of revised constitutions and statutes).

For the purpose of the analysis all three-year periods of state legislatures were homologized to periods of three years starting with 1974–1977 and ending in 2010–2013. The analysis also included legislative periods until the court was created. After the court's creation, legislatures' preference for their creation would have no bearing on courts' existence, and consequently, no subsequent data informed the analysis. Because of this, states where courts were created during the first period analyzed (1974–1977), were withdrawn from the analysis, since it was impossible to compare a period of failing to create a court with the creation period. Finally the Federal District case was not included in the analysis because the Federal District had no legislature until 1996, 26 years after its administrative court was created by the federal congress and ten years after its actual creation, and hence had no role in either process.

After removing states that established an administrative court before 1977, I analyzed all of Mexico's state legislatures' periods from 1974 and forward until they established an administrative court. Since some states established courts years after passing laws calling for them, the number of observations differs from one dependent variable to the other.

Finally, in order to consider both the differences in time periods and states' characteristics, I used time and state fixed effects regressions to eliminate the influence of time factors and local characteristics on correlations. I fixed time effects because they inevitably correlate with Mexico's democratization and the rise of political parties such as PAN and PRD. Therefore, it is difficult to distinguish time effects from political ones. Moreover, time effects also correlate with variables such as divided government and new political party government.

State fixed effects are also important because states in Mexico differ in more than one characteristic (geography, population, income, traditions, etc.).

As described, five independent variables explain the incorporation of administrative courts to local constitutions and the *de facto* creation of courts:

a. Difference-Seats captures both the strength of the political party and the degree of uncertainty. The difference between seat shares of the strongest and second strongest parties in the legislature measure this variable. As Ginsburg (2006) states, "This captures the extent to which there is a dominant party and should correlate with the degree of political uncertainty during constitutional drafting."

b. Herfindahl-Hirschman Index (HHI) is a different measure of party strength and degree of uncertainty within a legislature (analogous to market concentration). It measures the concentration of power a political party has over a legislature. The calculation requires determining the market share of each political party, squaring each political party percentage within the legislature, and adding the resulting figures together (Cohen and Sullivan 1983: 476).

c. Divided government is a binominal variable establishing whether the governor shares political affiliation with a plurality of sitting legislators (1) or has a different political affiliation (2).

d. New Political Party Governor captures the existence of a governor whose political party affiliation differs from his or her predecessor.

e. Neighbor-courts captures the percentage of neighbor states that have already incorporated an administrative court into the state's constitution. The numerical value of this variable would be the percentage of neighboring countries in the same sub-region with an administrative court.

The analysis measures two dependent variables:

a. *De jure* creation of an administrative court: This variable describes the state constitution's mandate to create an administrative court regardless of its effective existence. De jure creation was coded as 1. Those periods without such a law were coded as 0.

b. *De facto* creation of an administrative court: This variable describes the actual creation of an administrative court. Creation was coded as 1. Periods in which no court exists were coded as 0.

VI. Findings and implications

a. Analysis of the de jure and de facto creation of administrative courts

The results show that the only variable explaining both *de jure* and *de facto* creation of administrative courts in Mexico is New Governor. Variables capturing only the legislature's composition or the combination of the legislatures' political composition did not correlate at all with the creation of administrative courts. Results also show that in the case of *de facto* creation of administrative courts the only independent variable explaining it was New Governor.

To test factors influencing the *de jure* as well as *de facto* creation of administrative courts in Mexico I ran two fixed effects OLS regressions using as independent variables the difference between the seat shares of the strongest and second strongest parties in the legislature, the HHI, the existence of a divided government and the existence of a new governor. Table 3 shows the results of such regressions.

Table 3. Influence of political party's variables over the *de jure* and *de facto* creation of administrative courts

Regression equations: *De jure*/*De facto* creation =
$$\alpha + \beta PartyStrength + \beta HHI + \beta PRIDivGovit + \beta NewGovit + \beta NeighborCourtsit + \delta t + \gamma i + \sum it$$

Creation as:	*De Jure*		*De Facto*	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	-.0140619 (.0098857)	0.157	.0029508 (.0081905)	0.719
HHI	-.0489507 (.2928747)	0.867	-.0017263 (.2751246)	0.995
Divided government	-.1998569 (.2013618)	0.323	-.1041184 (.1524723)	0.496
New governor	.4903089 (.1802037)	0.007*	.2886325 (.13135)	0.029*
Neighbor-courts	-.3890041 (.1774905)	0.030*	-.0927175 (.1444707)	0.522
R^2	0.4736		0.3796	
N	190		217	

Note: Results for year and state dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As Table 3 shows, for both *de jure* and *de facto* creation Difference-Seats, HHI, and Divided Government were not significantly correlated to the constitutional incorporation of administrative courts in Mexico. However, the variable New governor, which incorporated the political affiliation of the Executive branch to the model, was significant and showed a strong effect on the *de jure* creation of administrative courts in Mexico (.49) and in the *de facto* creation (.28). Therefore, the presence of a governor pertaining to a different political party from the previous one highly influences the creation of administrative courts. In this case the coefficients are large enough to suggest that this variable explains, in a consistent manner, not only the *de jure* creation of administrative courts but also the *de facto* creation.

Since in all of the cases here analyzed new governors were non-PRI governors, the data suggests the presence of a non-PRI governor strongly increases the likelihood a legislature will create an administrative court in Mexico. This suggests that legislatures display a greater interest

in monitoring bureaucrats under non-PRI governors than PRI governors, regardless of the legislature's composition. As the lack of effect of the legislature's composition suggest, the fact that most of the bureaucrats were affiliated with the previous governor's political party deprives legislatures and new governors of a political mechanism (such as ideology or hierarchy) to control them appears to determine their interest in creating an administrative court. Their certainty in power does not trump this mechanism. However, new governors from the same political party as the previous governor rely on political mechanisms of control, since most of the bureaucrats they inherit share their political affiliation. These findings also confirm that governors in the states of Mexico are important political actors setting legislative agenda.

Interestingly, although the political party of the governor was an important variable explaining the creation of administrative courts, the OLS regression shows no consistent influence of the unlikeliness of the Governor's political party and legislature's majoritarian political party over the *de jure* and *de facto* creation of an administrative court. Therefore, the difference between the legislature majoritarian political party and the governors' political party has no apparent effect on administrative courts' creation. This finding may also support the hypothesis that administrative courts' creations are directly related to the political party affiliation of the previous governor and not to the actual government. However, the database contained only two cases in which the governor pertained to a political party different from the political party (Chihuahua with a majoritarian PRI legislature and a PAN governor in 1985 and Tlaxcala with a PRI legislature and a PRD governor in 2001).

Finally, *de facto* creation of administrative courts did not correlate with the variable capturing the number of neighbors in which an administrative court existed, but *de jure* creation shows a negative and significant correlation. The greater the number of existing administrative

courts in neighbor states the lower the likelihood a state will amend its constitution to call for an administrative court. This finding is counterintuitive; rather than a contagious effect, it suggests an aversive effect. It seems possible that the negative experiences of neighboring states explain this effect, but the data provides no particular support for this explanation.

b. Analysis of the lags between the de jure and the de facto creation of administrative courts in Mexico

In order to analyze the widely varying lag periods between enactment of amendments calling for administrative courts and actual creation, I tested the influence of the political party variables I developed for the insurance and the dominion model, as well as several other models based on the current literature on lags between *de jure* and *de facto* implementation of rights.

The insurance model would predict that the stronger the majoritarian political party was at the time of the *de jure* creation the lower the probability of actually creating the court (*de facto* creation) right after the incorporation. Since an administrative court will not be considered a real threat until is actually created, political parties will prefer to wait to create it until there is a real uncertainty and not before. By contrast, the dominion model would suggest that when a single party retains control of a legislature through subsequent terms, *de jure* creation of courts will show a longer lag than in periods of change.

I used a hazard function multivariate regression to test the influence of political party variables over the lags between *de jure* and *de facto* creations, with lag as the dependent variable and strength of political party within legislatures and PRI determinants as independent variables. I assumed that the treatment of the subjects was the *de jure* incorporation to the constitution and an outcome of the actual creation (failure=0) or the non-creation (outcome=1). Table 4 shows the results of the set regression using the exponential model.

Table 4. Influence of political party variables over the *De jure- De facto* lags

	Lag *De jure/De facto* creation:	
	Haz. Ratio	*p*-value (95% C.I)
Difference-Seats	1.025195 (.0655945)	0.697
HHI	.9672372 (4.879984)	0.995
Divided government	2.53e-07 (.0007547)	0.996
New governor	.8156553 (.9784537)	0.865
Neighbor-courts	.8931011 (.2271574)	0.657
Prob > chi2	0.9236	
N	30	

As Table 4 shows, none of these variables explained the existence of the lag in any way. My analysis likewise shows that the percentage of proximate geographical states with an administrative court did not explain the lag, either.

VII. Summary

The creation of administrative courts in Mexico has varied over time and across states. Some Mexican states created their administrative court in the 1970s while others created them very recently. They also vary significantly in the time elapsed between the *de jure* creation of the courts and the *de facto* creation of each court. I used two models to analyze the creation of both courts and the laws that call for them: the insurance model and the dominion model. The insurance model posits that legislators view courts as insurance to cover future losses of power. Therefore, the higher the electoral uncertainty, the higher legislators' demand for courts will be. To measure electoral uncertainty I used two different measures: i) the difference between the seat

shares of the strongest and second strongest parties in the legislature and ii) the Herfindahl-Hirschman Index, which measures in this case the size of political parties in relation to the legislature, and thereby indicates the amount of competition between them.

The dominion model, on the other hand, is a simpler model, which posits that, regardless of uncertainty, the capacity of a legislature's majoritarian political party to control bureaucrats through informal mechanisms such as ideology or hierarchy influences the creation of an administrative court. To measure legislatures capacity of control I used two proxies: the alignment between governors' and legislatures' majoritarian political parties and the alignment between the elected governor's political party affiliation and the previous governor's political party.

After a fixed-effects regression analysis, I show that the insurance model measured by the strength of the majoritarian political party within the legislature (Difference-Seats) and the HHI does not explain in any manner the creation of administrative courts in Mexico. However, the dominion model measured by the variable New governor is helpful to predict not only *de jure* but also *de facto* creations of administrative courts in Mexico

According to the analysis, the probability of creating an administrative court when a newly elected governor's party affiliation differed from the prior's affiliation was .49 for *de jure* creation and .28 for *de facto* creation. Such findings suggest that the political variables that most influence the probability of creating an administrative court exist in the executive branch rather than the legislature. This conclusion is consistent with two facts: administrative courts bind the executive branch, not the legislative branch, and governors' offices have a good deal of political power in Mexico—more than any other part of government.

Regarding the gap between the *de jure* and the *de facto* creations, no specific variable that could explain the gap emerged. If the *de jure* creations were window-dressing strategies, we might expect states with similar political circumstances to use the same strategy, but they did not. It is worth noticing that, although disregarding federal mandates differs from disregarding states' own mandates, local legislators do not always comply with federal constitutional mandates or with their own constitutions' mandates in other cases. For example, state legislators have at times disregarded state liability laws, criminal procedure codes, and transparency laws. I can hypothesize that legislatures that did not create their courts promptly after voting for constitutional amendments calling for them must be unable to agree on the details of these courts, which include judges' appointments, enactment of both substantive and procedural laws, and specific budgets. The passage of time may change legislative conditions to lower legislators' predilection to create a court.

Finally, it is worth pointing out that although it is interesting to analyze *de jure* creation of administrative courts, in terms of effective control, the most important variable is the *de facto* creation of administrative courts, since *de jure* creation provides no actual control of bureaucrats. *De jure* creations require strong voting coalitions but impose fewer actual costs than *de facto* creations, which require political consensus regarding the details of the courts. In this regard, once an administrative court is created, the change in political party configuration of the executive branch or the existence of other formal controls over bureaucrats would no longer influence the creation or even the extinction of administrative courts but their strength, which is the subject analyzed in Chapter II of this dissertation.

Chapter II. Independence and institutional capacities of administrative courts in Mexico

Institutions are designed and evolve in different manners. In the specific case of courts it is perceived that a good predictor of their design and evolution is democracy. Processes of democratization or increases in democracy often result in the improvement of courts' independence guarantees or capacities. As explained in Chapter I, Mexico is a federal state with 31 states and a Federal District. Twenty-nine states and the Federal District have administrative courts that review executive action. The design of these courts varies in terms of the branch to which the court belongs, the judicial appointment mechanism, judges' term in office, and procedural rules regarding access, monetary liability, and enforcement. This variation existed when the earliest Mexican administrative courts were created and has evolved since then. Although no clear pattern dictates the design of every court in the country, courts overall have become more independent, strong, and open. Compared to the Mexican administrative courts of the 1970s, 1980s, and early 1990s, the appointment processes now have greater isolation from the Executive branch, and longer judicial term lengths; some even have tenure. Administrative courts also give broader access to citizens than they once did and have stronger capacities to enforce their decisions and impose sanctions. This chapter analyzes this evolution across the country, from the original design of the earliest administrative courts to 2007.

I. Introduction

Both distributional and cooperative theories have been developed to explain institutional design. Previous research focused on strong external shocks that influenced institutional change. More recently scholars have been analyzing gradual changes and therefore examining gaps between

the rule and its interpretation or its enforcement, rather than strong shocks (Mahoney and Thelen 2010).[1] The most recurrent explanation relies on the power of the key actors with the power to promote and approve changes. Negretto explains the evolution of electoral rules in Latin America with reference to the level of general guiding principles with which political actors usually agree, such as political order or government stability. He argues that when it comes to setting specific design options, constitution makers have a partisan interest in the adoption of institutions that provide them with an advantage, stating: "constitutional choice is endogenous to the performance of preexisting constitutional structures and to the partisan interests and relative power of reformers" (Negretto 2013).

However, as in the case of the theories explaining the creation of institutions, the most recurrent explanation relies on the power of the key actors with the power to promote and approve changes. In the specific case of courts, several studies provide evidence supporting that democratization processes have made courts more independent. In Latin America, for example Helmke and Rios-Figueroa found that, at least on paper, courts provide more insulation from political pressure than they once did. They argue distribution of political power across the branches of government explains the phenomenon (Helmke and Rios-Figueroa 2011). Ginsburg and Moustafa (2008) identify the same trend in relation to non-democratic regimes, although democracy typically predicts courts' increasing independence. As explained in Chapter I, the insurance model provides a rational justification for the coincidence between non-democratic regimes and independent courts. Under uncertainty most regimes would prefer strong

[1] Mahoney and Thelen posit "that institutional change often occurs precisely when problems of rule interpretation and enforcement open up space for actors to implement existing rules in new ways." They assume institutions are self-reinforcing and that they inevitably raise resource considerations and have distributional consequences. Therefore incremental change emerges as a consequence of the gaps between the rule and its interpretation or its enforcement (Mahoney and Thelen 2010).

independent courts that guarantee independent judgment in the long run.

In Mexico, most administrative courts were incorporated into the executive branch at the time of their creation, with governors nominating judges to terms shorter than their own. However, more recently, administrative courts in Mexico have been incorporated to the judicial branch and governors do not monopolize judges' nominations or serve longer terms than judges.

This chapter will analyze Mexican administrative courts' design and evolution, hypothesizing that uncertainty in the political arena would increase the chances of creating or converting a court. Based on the developed dominion model, I hypothesize that divided governments and those in which the governor belongs to a different party from his or her predecessor will promote strong and independent courts. Analysis will encompass the degree of independence and institutional capacities of each administrative court as well as the political party affiliations of both governors and local legislators.

This chapter is divided in three parts. The first part will describe current literature on independence and institutional capacities of courts. The second part will describe design features of administrative courts and their evolution over time, as well as the classification of design variables in light of the independence or institutional capacity they provide. Finally I will test both the insurance model hypotheses as well as the dominion model hypotheses in relation to the design characteristics found in Mexican administrative courts.

II. Independence and institutional capacities of administrative courts

To function properly, courts must provide the necessary mechanisms to guarantee that judges have the appropriate jurisdiction, which the relevant actors turn to the court for adjudication, and that justices are willing to get involved in such disputes (Helmke and Rios-Figueroa 2011). To

achieve this, judges must be independent and empowered to enforce their decisions, and citizens must have access to courts.

Impartial judgments depend on judicial independence "from the influence of the legislative and executive branches and of private interests" (Aydin 2013). Other branches of government must have no ability to curtail the tenure (security in office), appointment procedures, or financial compensation of sitting judges. An independent and powerful judiciary also depends on judicial legitimacy (Caldeira 1986), which requires stability, neutral arbitration of disputes about court rules, and conditions in which ideological judging does not benefit judges in the long-run (Solum 2004). In other words, external or internal pressure on judges' decisions should be as minimal as possible and their decisions should be justified by law and facts (Shapiro 1981; Pozas-Loyo and Figueroa 2010). Most scholars describing these aspects of independence refer to general courts, but they also apply to administrative courts; indeed, the particular role of administrative courts in addressing complaints against members of the executive branch make isolation from the executive especially important.

The variables affecting courts' independence include the process of judge's appointments (both proceedings and requirements), removal of judges (both proceedings and causes), tenure, and salary security (Rosenberg 1992: 371; Herz 2011: 450; Moraski and Shipan 1998, Epstein and Segal 2005 and Melton and Ginsburg 2014).[2] In general, reduced role of the executive in appointment, sound legal qualifications for judicial appointment, limited role of the executive in removal process, limited causes for removal, longer judicial terms—up to lifetime and at least in excess of executive terms in office—and protecting judicial salaries from reduction by other

[2] For example, in a study of 75 countries' constitutions (Hayo and Voigt 2010) the indicators used to measure independence were: the appointment procedure for judges, judicial tenure, the power to set judges' salaries, accessibility of the court and its ability to initiate proceedings, allocation of cases to members of the court, competencies assigned to the constitutional court, and publicity.

branches, promote judicial independence.

A number of studies have emphasized the importance of appointment process as a determinant of judicial independence and judicial legitimacy (Ferejohn 1999; Choi, Gulati and Posner 2009; Reddick, Nelson and Paine 2009; Brace and Gann 1997; Gerard, Main and Dixon 1986; Garoupa and Ginsburg 2009; Lindquist 2013). Around the world, judicial selection exists on a spectrum from the direct designation of judges by the President, to presidential designation with Senate approval, to public election. Irrespective of the selection method, both international and national standards emphasize that such processes must safeguard against improperly motivated judicial appointments (United Nations 1985).[3] Judicial appointments must therefore be transparent and carried out according to objective and public criteria reflecting proper professional qualifications (International Association of Judges 1999). Similarly, recommendation (94) of the Council of Europe suggested that decisions concerning career judges should be based on objective criteria and that the career of judges should be based on merit, qualifications, integrity, ability, and efficiency.

Moreover, Principle 10 of the Basic Principles on the Independence of the Judiciary (UN) establishes that "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be

[3] These processes also should ensure that candidates may not be discriminated by race, color, sex, religion, political or other opinion, national or social origin, property, birth or status. See Office of the High Commissioner for Human Rights of the United Nations, Basic Principles on the Independence of the Judiciary.

considered discriminatory" (United Nations 1985).

Judges' removal processes are as important as judicial appointments. Melton and Ginsburg (2014) note that having no process for removal, restricting removals to instances of a supermajority vote in the legislature, or process by which only the public or judicial council can propose removal and another political actor is required to approve the removal all ensure judicial independence (196). Legal scholars also agree that longer terms ensure judicial independence, with appointments for life the ideal (Landes and Posner 1975; Melton and Ginsburg 2014) and terms longer than the appointers' a crucial benchmark (Rios-Figueroa 2011). Finally, while studies investigating the effects of salaries on judges' behavior have failed to locate a significant relationship between judges' salaries and judges' performance (Choi, Gulati & Posner 2009) the threat of diminishment of salaries constitutes a clear threat to judges' independence; legal norms must insulate judges from this type of inference. Measures to protect judges from retaliation from government actors in the form of dismissal or salary loss are a necessary part of the successful functioning of any court (Hayo and Voigt 2010, 4).

Further, courts need guaranteed access and should be able to enforce their own decisions. For administrative courts, this means having the power to issue relieves including monetary liability to compensate plaintiffs when they find the government violated the law. Chapter IV of this dissertation addresses enforcement.

III. Design of administrative courts

Six major types of variation exist across Mexico's administrative courts. The first is whether the judiciary or the executive branch hosts the court. State legislators who have established

administrative courts within the executive power argue that separation of powers prohibits the judiciary from controlling executive actions (Lomeli-Cerezo 2001). The significance is that the hosting branch reviews the court's budget. Whether a court submitted its budget proposal through the judicial branch to the congress to the executive branch has an impact on independence.

Mexico's administrative courts use no fewer than five divergent appointment procedures. The first requires the judicial branch to nominate and the legislative branch to approve the appointment. The second uses a mixed system, wherein the legislature nominates and appoints some judges and the judicial branch nominates others, subject to legislative approval. The third calls on the legislature to nominate and approve all judges. The fourth calls on all three branches: The judicial branch proposes a list of candidates, the executive branch nominates from that list, and the legislative branch approves the appointment. The fifth type calls for the executive branch to nominate the candidate and the legislative branch to approve the appointment. The legislature always controls approval, but the nomination processes differ quite widely.

Judges' term length varies almost as widely. Mexican state constitutions conform to four models. The first stipulates a specific period, which varies from three years to ten years. The second type also stipulates a specific period of time, but carries the possibility of re-appointment for another period. The third type stipulates a specific time with a possibility of renewal for life tenure. In the fourth model, judges are appointed for life. Table 5 summarizes the variance in the branch, nomination, term, and term limit in each state. As the legislature always approves appointments, no column for appointment approval appears.

Rules of standing also vary. As in the United States, the Mexican legal system requires plaintiffs to prove an injury in fact by demonstrating that the injury was concrete and particular,

actual or imminent, that there was a causal connection between the injury and the government's action, and that a favorable decision could lead to redress. Across Mexico's 30 state-level administrative courts, there are two types of rules of standing: "legitimate interest" and "legal interest." The legitimate interest rule permits review of agency action by any person adversely affected or aggrieved by any agency action. The legal interest rule permits review of agency action by any person with legitimate interest unless she is in violation of applicable laws. Both require plaintiffs to prove an injury in fact; the legal interest limits standing to plaintiffs who can prove that an agency violated a right that was not previously routinely violated.

Courts have different powers as to compensatory damages. Mexico's administrative courts follow two types of rules: limited relief rules or total relief rules. Limited relief rules permit the court to issue any relief except money. Judges can make orders of enforcement, declaratory judgments, compulsory orders directing the agency or its officials either to act or to refrain from acting, or judgments upholding or setting aside, in whole or in part, the results of agency action as in the United States (Strauss 2002). Total relief rules permit all of these remedies as well as monetary damages for acts that violate statutory norms.[4]

The sixth variation is in courts' enforcement capacity. If defendants fail to comply with decisions by performing actions the court has required, courts are equipped with different mechanisms to enforce them. Most can impose fines. Some can dismiss agents who fail to comply, if noncompliance persists over time. Most states limit judges' ability to dismiss the governor by erecting additional barriers to their dismissal for noncompliance.

Table 5 summarizes the variance of each of these six characteristics.

[4] This remedy is different from tort claims against a variety of intentional or negligent behaviors by civil servants.

Table 5. Mexican administrative courts characteristics when effectively created

State	Branch	Nomination	Term	Limits term	Access	Monetary liability	Enforcement capacities
Tamaulipas (1951)	Executive	Governor	6	1	Limited access	No	Only fines
Veracruz (1975)	Executive	Governor	3	Tenure if ratified	Open access	No	Only fines
Sinaloa (1976)	Executive	Governor	6	2	Open access	No	Only fines
Sonora (1977)	Executive	Governor	6	2	Limited access	No	Only fines
Hidalgo (1979)	Executive	Governor	For life	Tenure	Open access	No	Only fines
Jalisco (1983)	Judicial	Judiciary	7	2	Limited access	No	Only fines
Guanajuato (1985)	Executive	Governor	6	Tenure if ratified	Limited access	No	Only fines
Queretaro (1985)	Executive	Legislature	3	1	Open access	No	Only fines
State of Mexico (1986)	Executive	Governor	6	Tenure if ratified	Open access	No	Dismissal powers
Guerrero (1987)	Executive	Governor	6	Tenure if ratified	Open access	No	Dismissal powers
Yucatan (1987)	Executive	Governor	4	Tenure if ratified	Open access	No	Only fines
Baja California (1989)	Executive	Governor	6	Tenure if ratified	Limited access	No	Dismissal powers
Chiapas (1989)	Judicial	Governor	6	Tenure if ratified	Limited access	No	Dismissal powers
Morelos (1990)	Executive	Governor	6	1	Open access	No	Only fines
Nuevo Leon (1991)	Executive	Governor	6	Tenure if ratified	Limited access	No	Only fines
San Luis Potosi (1993)	Executive	Governor	6	Tenure if ratified	Open access	No	Only fines
Campeche (1996)	Judicial	Judiciary	6	Tenure if ratified	Limited access	No	Only fines
Colima (1996)	Executive	Governor	6	Tenure if ratified	Open access	No	Dismissal powers
Tabasco (1997)	Executive	Governor	6	3	Open access	Yes	Only fines
Aguascalientes (1999)	Judicial	Governor	6	2	Open access	No	Dismissal powers
Zacatecas (2000)	Judicial	Judiciary	6	Tenure if ratified	Open access	No	Only fines
Nayarit (2002)	Executive	Governor	6	1	Open access	Yes	Dismissal powers
Tlaxcala (2002)	Judicial	Legislature	6	1	Limited access	No	Only fines
Baja California Sur (2004)	Judicial	Governor	6	1	Limited access	No	Dismissal powers
Durango (2004)	Executive	Governor	6	2	Open access	Yes	Dismissal powers
Quintana Roo (2004)	Judicial	Governor	6	2	Open access	Yes	Dismissal powers
Oaxaca (2005)	Executive	Governor	8	1	Open access	Yes	Only fines
Michoacan (2006)	Executive	Legislature	5	3	Limited access	Yes	Dismissal powers
Chihuahua (2013)	Judicial	Legislature	6	2	Open access	No	Not specified

Some of this variance reflects amendments to state constitutions or statutes to change the design of the court. Twelve states have not changed the design of their court since creation: Baja California Sur, Campeche, Chihuahua, Colima, Guerrero, Michoacán, Nayarit, Quintana Roo, Sonora, Tabasco, Tamaulipas and Zacatecas. Table 6 shows the evolution of design composition of administrative courts in the eighteen other states that have such courts.

Table 6. Variation of administrative courts' design

	Total courts	Judicial branch court	Non-Governor Nomination	Av. Term	Av. limits term	Tenure possibility	Wide access	Monetary liability	Enforcement capacities
Design when created		28%	21%	6.6	2.8	45%	62%	21%	41%
1974-1977	4	0%	0%	5.0	2.7	33%	67%	0%	33%
1977-1980	4	0%	0%	5.3	2.5	25%	50%	0%	25%
1980-1983	5	0%	0%	10.2	3.0	40%	60%	0%	20%
1983-1986	9	0%	0%	8.2	3.6	56%	78%	0%	33%
1986-1989	13	0%	8%	7.4	3.6	58%	67%	0%	33%
1989-1992	15	7%	7%	7.1	3.6	60%	60%	0%	40%
1992-1995	16	7%	7%	7.1	3.9	67%	60%	0%	40%
1995-1998	19	26%	21%	5.8	3.8	63%	58%	11%	37%
1998-2001	21	36%	27%	6.2	3.5	55%	64%	18%	55%
2001-2004	26	44%	28%	6.6	3.1	44%	60%	28%	60%
2004-2007	28	39%	36%	6.6	2.8	32%	61%	36%	57%
2007-2010	28	43%	36%	6.6	2.8	32%	61%	39%	61%
2010-2013	29	52%	52%	6.4	2.7	34%	59%	38%	59%

Some clear tendencies exist. First, increasing numbers of administrative courts are incorporated to the judicial branch. Second, fewer and fewer governors monopolize nominations; more than half of the courts establish that nominations have to be made by non-governors authorities. Finally, enforcement mechanisms have expanded to widen dismissal powers. While states have changed other characteristics as well, no clear pattern appears.

Table 7 shows the classification of the three areas of variance that relate to independence. The point assignment for branch reflects the initial power of the hosting branch over each court's

budget. Based on the point assignment below, the most independent court has 5 points and the least independent has 0 points.

Table 7. Variables related to courts' independence

Variable/Description	Points
Appointment process: the branch that nominates judges to the administrative court.	Governor has no role in appointment 0 Governor nominates judges 1
Term length: the length of time for which judges serve.	Term length of the appointer is larger than the judge's 0 Judge's term length is equal to the appointer's 1 Judge's term length exceeds the appointer's 2 Life appointments 3
Branch: the branch to which the court belongs.	Judicial branch 1 Executive branch 0

Table 8 provides a classification system for the three areas of variance that relate to court strength—access, enforcement, and monetary liability. A strong court must guarantee open access to parties with relatively lenient rules of standing. Means of enforcement of decisions also indicate strength, with courts that can award monetary damages in addition to other remedies having greater strength and those that can dismiss noncompliant agents stronger than those who cannot. As shown, the strongest court would have 3 points and the weakest 0.

Table 8. Institutional capacities of administrative courts

Variable/Description	Points
Access: plaintiffs' requisites to sue the government. Stronger courts only require proof of real harm. Weaker courts require plaintiffs to also prove the existence of a right they argue was violated.	Restricted access 0 Open access 1
Monetary liability: the type of decisions a court can make. Some courts have the power to issue monetary liability of government and some cannot.	No powers to impose monetary liability 0 Powers to impose monetary liability 1
Enforcement capacities: the measures at a court's disposal in enforcing decisions. Some courts can dismiss non-compliant defendants.	No dismissal capacity 0 Dismissal capacity 1

Figure 4 shows the combinations of independence and institutional characteristics of Mexican administrative courts at the time of their creation.

Figure 4. Institutional capacities and independence of administrative courts when effectively created

	Low independence (0, 1 and 2).	High independence (3, 4 and 5).
High institutional capacities (2 and 3).	State of Mexico-1986 Guerrero-1987 Colima-1996 Tabasco-1997 Aguascalientes-1999 Nayarit-2002 Quintana Roo-2004 Durango-2004 Oaxaca-2005 Michoacan-2006	Strong courts 3% Chihuahua-2013
Low institutional capacities (0 and 1).	Weak courts 41% Veracruz-1975 Sinaloa-1976 Sonora-1977 Tamaulipas-1977 Queretaro-1985 Yucatan-1987 Baja California-1989 Morelos-1990 Nuevo Leon-1991 San Luis Potosi- 1993 Guanajuato-1985 Baja California Sur-2004	Hidalgo-1979 Jalisco-1983 Chiapas-1989 Campeche-1996 Zacatecas-2000 Tlaxcala-2002

Only 3% of the courts could be classified as strong; 41% were as weak in both dimensions. However, as Figure 5 shows, this has changed over time.

Figure 5. Institutional capacities and independence of administrative courts 2010-2013

	Low independence (0, 1 and 2).	High independence (3, 4 and 5).
High institutional capacities (2 and 3).	Colima Durango Guanajuato Guerrero Nayarit Quintana Roo State of Mexico San Luis Potosi Tabasco	Strong courts 27% Aguascalientes Chihuahua Michoacan Morelos Oaxaca Queretaro Sinaloa Veracruz
Low institutional capacities (0 and 1).	Weak courts 17% Baja California Sur Hidalgo Nuevo Leon Sonora Tamaulipas	Baja California Campeche Chiapas Jalisco Tlaxcala Yucatan Zacatecas

The ratio of weak administrative courts decreased from 41% to 17%, and the ratio of strong administrative courts increased from 3% to 27%.

IV. Empirical analysis

The purpose of the empirical analysis is twofold. Firstly, I will analyze the influence of political parties' variables on the design of administrative courts at the time of their creation. Secondly, I will analyze the advances and setbacks of the different design variables in terms of the degree of independence and strength they provide to courts. As in Chapter I, I will use the insurance and the dominion model to do such analysis.

The dataset referenced in Chapter I provides the data required here; the present analysis requires only the data that encompasses all legislatures' periods starting from the period in which

the court was created and ending in the period 2010–2013. As in Chapter I the analysis excludes the Federal District case because it had no legislature until 1996.

The analysis of administrative courts' design when created only uses those periods in which the courts were created (29 observations). For the analysis of design evolution I analyzed data of all state legislatures' periods beginning with the creation date and ending in the period 2010–2013.

Independent variables explaining courts' design are as follows:

a. Difference-Seats captures both the strength of the political party and the degree of uncertainty. The difference between seat shares of the strongest and second strongest parties in the legislature measure this variable (Ginsburg 2006).

b. Herfindahl-Hirschman Index (HHI) measures political parties' concentration within a legislature. The calculation requires determining the market share of each political party, squaring each political party percentage within the legislature, and adding the resulting figures together (Cohen and Sullivan 1983: 476).

c. Divided government is a binominal variable establishing whether the governor shares political affiliation with a plurality of sitting legislators (1) or has a different political affiliation (2).

d. New Political Party Governor captures when a governor whose political party affiliation differs from the previous governor takes office.

Dependent variables will be each of the design characteristics of administrative courts. Each of these variables was codified using the degree of independence or strength that each of such characteristics provided. Table 9 describes each variable.

Table 9. Dependent variables Chapter II

Variable		Code	
Judicial Branch	Dummy variable describing the branch of government to which the court is assigned.	Within the executive	0
		Within the judiciary	1
Non-executive nominations	Dummy variable describing which branch nominates a judge to be appointed.	Nomination by the executive	0
		Nomination by the judiciary or the legislative	1
Judges' term length	Dummy variable describing the different term lengths.	Life appointments	3
		Appointments made for a term length greater than the appointer's term length	2
		Appointments made for an equal to the appointer's term length	1
		Appointments in which the term length of the appointer is larger compared to the appointee's term	0
Access	Dummy variable describing plaintiffs' requisites to sue the government. Limited access requires only proving real harm. Open access requires plaintiffs to prove real harm plus the existence of a previous right.	Open access	0
		Limited access	1
Monetary liability	Dummy variable describing the type of decisions a court is able to make. Some courts have the power to issue any relief including monetary liability of government and government agencies for wrongful acts.	No powers to impose monetary liability	0
		Powers to impose monetary liability	1
Enforcement capacities	Dummy variable describing the type of enforcement capacities of courts. Some courts have the power not only to impose fines to non-complying defendants but also to dismiss them. Other courts only have the power of imposing fines.	No dismissal capacity	0
		Dismissal capacity	1

Using the empirical models developed in Chapter I, I tested the following hypotheses:

1. The higher the difference of seat shares of the strongest and second strongest parties in the legislature, the lower the independence and institutional capacities of administrative courts would be. The model describing this hypothesis is:

$$\text{Administrative court design} = \alpha + \beta Difference Seats it + \delta t + \gamma i + \sum it$$

2. The higher HHI, the lower the independence and institutional capacities of administrative courts would be. The model describing this hypothesis is:

$$\text{Administrative court design} = \alpha + \beta HHIit + \delta t + \gamma i + \sum it$$

3. The higher the difference between the legislative and the executive's political parties the higher the independence and institutional capacities of administrative courts would be. As explained, the "dominion model" posits that political parties with minimal political capacity to control bureaucrats will have a higher preference for creating or strengthening administrative courts. The model describing this hypothesis is:

$$\text{Administrative court design} = \alpha + \beta PRIGovLegit + \delta t + \gamma i + \sum it$$

4. The existence of a governor with different political affiliation would increase the probability of creating independent and strong courts. The model describing this hypothesis is:

$$\text{Administrative court design} = \alpha + \beta NewGovit + \delta t + \gamma i + \sum it$$

V. Findings and implications

1. Administrative courts' independence and institutional capacities when created

To analyze the design of administrative courts when created, I used a time-fixed effects regression over each variable to test the effect of each of the independent variables. However, it

is important to notice the limits of the analysis since the total observations are only 29. Table 10 shows the results of analyzing courts' design features related to independence of administrative courts when created.

Table 10. OLS regression with year fixed effects of courts' independence when created

Feature design:	Non-executive nominations		Judges' term length		Judicial branch	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	-.0049416 (.0155711)	0.756	.0336842 (.0204382)	0.123	.0216458 (.0146384)	0.163
HHI	2.097685 (1.286793)	0.127	-2.947013 (1.689012)	0.105	2.206649 (1.209717)	0.091
Divided government	.9833922 (.3105196)	0.007*	.0681039 (.4075801)	0.870	.4216683 (.2919202)	0.172
New governor	.6160816 (.3270751)	0.082	-.7237107 (.4293104)	0.116	.213657 (.3074841)	0.499
R^2	0.6903		0.6903		0.6903	
N	29		29		29	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As shown in table 10, neither judges' term length nor the branch to which the court belongs were correlated with any of the independent variables. The only variable that showed a strong correlation was Non-Executive nomination of judges. The independent variable that was significantly correlated was the existence of a governor having a different political party affiliation from the previous one. In other words, the probability of finding a non-executive appointment is higher in those cases in which the existent governor pertains to a different political party from the previous one. Since non-executive appointments guarantee a higher degree of independence to judges, the higher the existence of a difference between the previous governor and the current governor's political parties, the higher the independence of administrative courts.

Table 11 shows the results of analyzing courts' design features related to institutional capacities of administrative courts when created.

Table 11. OLS regression with year fixed effects of courts' institutional capacities when created

Feature design:	Access		Monetary liability		Enforcement capacities	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	.0076627 (.022698)	0.741	-.0061058 (.0147217)	0.685	.0216458 (.0146384)	0.163
HHI	.7150416 (1.875768)	0.709	-1.33527 (1.216602)	0.292	2.206649 (1.209717)	0.091
Divided government	.051005 (.4526467)	0.912	-.4854026 (.2935815)	0.122	.4216683 (.2919202)	0.172
New governor	-.9044941 (.4767798)	0.080	-.5192825 (.309234)	0.117	.213657 (.3074841)	0.499
R^2	0.5414		0.5414		0.5414	
N	29		29		29	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As Table 11 shows, regarding institutional capacities when administrative courts were created, the regression did not show any significant relationship with the independent variables.

2. Administrative courts' independence and institutional capacities evolution

To analyze the design of administrative courts' evolution, I used a state and time fixed effects regression over each variable to test the effect of each of the independent variables. Table 12 shows the results of the analysis.

Table 12. OLS regression with state and time fixed effects of courts' independence evolution

Feature design:	Non-executive nominations		Judges' term length		Judicial branch	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	.0022414 (.0043983)	0.611	.0011883 (.0091153)	0.896	.0082548 (.0048117)	0.088
HHI	.1640368 (.2954761)	0.579	-.1345591 (.6123621)	0.826	-.1262094 (.3232487)	0.697

Table 12, continued

Divided government	-.1270513 (.0614735)	0.040*	.1421974 (.1274013)	0.266	.0109517 (.0672516)	0.871
New governor	-.0440598 (.0523427)	0.401	-.0609492 (.108478)	0.575	.0406193 (.0572625)	0.479
R^2	0.7361		0.5807		0.7118	
N	230		230		230	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

Table 12 shows that neither judge's term length nor the branch to which the court belongs was correlated with any of the independent variables. The only variable showing a correlation was Non-Executive nomination of judges. However, contrary to the findings regarding administrative courts' design when created, the sign was negative. This suggests that the higher the difference between the political party between the legislatures' majority and the governor, the lower the probability of finding non-executive nominations. This finding goes against the developed hypothesis.

Table 13 shows the results of analyzing courts' design features related to institutional capacities of administrative courts' evolution.

Table 13. OLS regression with state and time fixed effects of courts' institutional capacities evolution

Feature design:	Access		Monetary liability		Enforcement capacities	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	.0064869 (.0034378)	0.061	-.0016844 (.0043958)	0.702	.0132242 (.0049836)	0.009*
HHI	-.0915714 (.2309503)	0.692	.0803764 (.2953107)	0.786	.0098143 (.3347967)	0.977
Divided government	-.0213581 (.048049)	0.657	-.0636064 (.0614391)	0.302	-.1231615 (.0696541)	0.079
New governor	-.0052302 (.0409121)	0.898	-.0093111 (.0523134)	0.859	.077754 (.0593082)	0.191
R^2	0.8819		0.6991		0.7547	
N	230		230		230	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As table 13 shows, the only institutional capacity variable that was correlated with an independent variable was enforcement capacities. Difference-seats correlated in a positive manner to courts providing more enforcement capacities. These findings suggest that the stronger a political party within a legislature the higher the probability of assigning strong enforcement capacities to an administrative court. As in the previous case, the finding is counter intuitive and does not support the developed hypothesis.

VI. Summary

The purpose of this chapter was to analyze administrative courts' design and evolution. I described several design features regarding courts' independence and institutional capacities. I classified as strong courts those showing high independence and high institutional capacities. I classified those with low independence and low institutional capacities as weak.

To analyze these designs I used both the insurance as well as the dominion model. Regarding design features such as branch to which the court belongs, type of appointment, judges' term lengths, access, monetary liability, and enforcement capacities I did not find clear evidence suggesting that the insurance or the dominion models accurately predict courts' design. In this regard, it is important to address the fact that weak institutions have been the result of window-dressing strategies by which actors create institutions but do not intend to enforce them. For these reasons, "actors' expectations about enforcement and stability shape how they approach institutional design" (Levitsky and Murillo 2009: 127). One other phenomenon that affects the manner in which institutions evolve is the presence of positive feedback processes or path dependence. The main reasons for path dependence to exist are learning effects, coordination effects, and adaptive expectations (Pierson 2004). For these reasons, path-

dependence is a phenomenon that may affect external influences over design. They also make it difficult to predict the evolution of an institution after its creation. As Mahone and Thelen (2010) state, "Institutional outcomes need not reflect the goals of any particular group; they may be the unintended outcome of conflict among groups or the result of ambiguous compromises among actors who can coordinate on institutional means even if they differ on substantive goals" 8).

However, although the empirical analysis in this chapter does not show any consistent correlation between political party variables and independence and institutional capacities variables, the general overview at the state level shows that Mexico's administrative courts' are evolving towards more independence. Compared to their design at the time of creation, the isolation of the appointment process from the executive branch has increased while judges' tenure has increased and in some cases been guaranteed. Regarding institutional capacities a similar trend can be observed. Except for open access, in general administrative courts show stronger enforcement capacities and more powers to decide monetary liability against government agents.

Chapter III. Specialization of administrative courts

Twenty-nine states of Mexico's 31 states and the Federal District have incorporated administrative jurisdiction to review executive action. Some states incorporated administrative jurisdiction to new specialized courts, while others incorporated administrative jurisdiction to already existing courts. Moreover, some states limited administrative courts' jurisdiction to tax and administrative cases, while others gave them broader jurisdiction. The evolution of these courts leaves them generally less specialized today. This chapter fills a gap in the literature by seeking to provide a consistent explanation for the specialization or generalization of Mexican administrative courts.

I. Introduction

The design of administrative courts around the world typically conforms to one of two models. The so-called French model has adjudication within the executive branch and has its own procedures, see for example (Caranta 2011)[1]; the judicial review model has adjudication within the judiciary, with procedures that are the same as the ones used to resolve other legal disputes.[2]

The French model stems from an understanding of the separation of powers that requires administrative adjudication to be a function of the executive branch. The model explicitly prohibited general judges from controlling executive activities (Rambaud 1993; Massot 2010).

[1] Caranta (2011) suggests the understanding of the principle of separation of powers that underlies the French model reflects a concern that any judiciary decision regarding the executives' decisions would be a limitation to the exercise of executive power.

[2] The common-law tradition defends the supremacy of the judiciary over any dispute between parties without any distinction between individuals and the state. It hold that government and citizens should be judged by the same rules and in equal conditions and therefore any authority can be brought before the common courts and judged by the judiciary.

The model follows a specialized French tribunal called the Conseil d'Etat that revises government acts as an administrative function (Garcia de Enterria and Fernandez 2006). The common-law tradition holds that citizens can bring any authority before the common courts for judgment. The judiciary protects the rule of law and the constitution under common-law traditions, and all disputes in the law come before the courts.

These foundations suggest that the legislature's interpretation of the separation of powers determines which model a Mexican administrative court will follow. However, it would be naïve to suggest that legislators' choices were based solely on their theoretical interpretation of the separation of powers principle. Moreover, the great variation of administrative courts design in Mexico, diverging both from the pure French and the pure common-law system design, suggests multiple factors at work in the design of administrative courts.

It likewise seems unlikely that theoretical concerns solely drive legislators' preference with respect to specialization. A specialized court may be more accurate, certain, and efficient. However, specialization also makes capture more easy. This chapter will seek to understand how legislators determine the tradeoff between accuracy and independence in the design of administrative courts. At the time of their creation, most Mexican administrative courts were new and specialized. However, increasing numbers have merged with electoral or general courts. This chapter will seek to understand the drivers of both the initial design and courts' evolution.

As explained in Chapter I, the insurance model provides a rational justification for the coincidence between non-democratic regimes and independent courts. Under uncertainty most regimes would prefer strong independent courts that guarantee independent judgment in the long run. Thus, the insurance model posits that under uncertainty legislators prefer to preserve the bargain, which requires accuracy within the courts. Therefore, the model suggests uncertainty

will prompt legislators to prefer specialized courts (Ginsburg 2001, 9). Thus I hypothesize that uncertainty in the political arena would increase the chances of creating or converting a court into a more specialized one.

The dominion model in contrast predicts that political parties with none or small political capacity to control their members will favor less specialization. It has been proposed that executive agents (bureaucrats) have strong incentives to support specialization to advance their interests in courts, since they are in an especially good position to benefit from judicial specialization (Baum 2010, 51). Since the dominion model suggests that legislators' main concern is to monitor bureaucrats pertaining to old regimes, they will have a higher preference for assigning administrative jurisdiction to already existing courts. I thus hypothesize that legislators will prefer general courts when (i) the government is divided or (ii) a governor with a different political party affiliation from the predecessor's is elected.

This chapter is divided as follows. Part I will describe literature related to specialized courts. Part II will describe specialized design features of administrative courts and their evolution over time. In the final part of the chapter I will test both the insurance model hypotheses and the dominion model hypotheses over specialization.

II. Specialized courts

Legal scholars have actively debated whether any adjudicative body should be specialized. Studies of specialized courts, such as tax courts (Howard 2009), bankruptcy courts (Seron 1978), military courts (Lurie 1992; Fisher 2003), international trade courts (Unah 1998), drug courts (Hoffman 2000), community courts (Fagan and Malkin 2003), and domestic violence courts (Mirchandani 2005) generally maintain that specialized courts produce higher-quality decisions

in expediting cases and content and help to achieve legal coherence and uniformity of judicial decisions. Specialized courts also help to reduce the workload of regular courts (Garoupa, Jorgensen, and Vazquez 2010), provide better training for judges and results easier to apply to subsequent cases, serve defendants better by using tailored procedures to deal with their particular characteristics, and use better technology in evidence production (Dari-Mattiacci, Garoupa, and Gomez-Pomar 2010, 28). The economic theory of labor division states that specialization enables society to obtain more output from a limited stock of resources at a lower cost, and several scholars point to this as a benefit (Posner 1983, 776, Jordan 1981, 745).[3]

Legislators may create administrative courts in the expectation that specialization will foster uniformity, predictability, and coherence. By concentrating cases in a single unit or a few adjudicative units and establishing a single voice, courts may create consistency, reducing the need for adjudicative intervention. Legislators may expect a single voice can render decisions that, over time, create a better body of law that is easier for executive agents to apply and predict (Kesan and Ball 2011, 402-03).

They also may expect better quality decisions. Some areas of law involve significant factual or legal complexity, for which the knowledge of a generalist judge does not suffice. Through specialization, judges may gain in-depth understanding of the existing law, the statutory scheme, and the technical issues surrounding the case and that this understanding increases the probability that the judges will correctly decide a case (Revesz 1990, 1117; Bruff 1991, 330; Jordan 1981, 747). As Baker and Malani (2011) note, the benefit of this "seems self-evident: a more accurate trial better distinguishes between the guilty and the innocent. And the greater is the wedge between the penalty for guilt and innocence, the better is the incentive to comply with

[3] Jordan argues that if judicial resources are scarce, a division of labor will better use the limited commodity.

the law" (2). Moreover, by improving the accuracy of a decision and the court's human capital and by creating legal uniformity, specialization may help to reduce the administrative costs of the adjudicative unit and the legal costs litigants face.

Another contributor to quality decisions legislators may expect is that specialist adjudicators may devote more time and effort to individual cases because they have smaller dockets. Judges who hear criminal cases typically give them priority (Jordan 1981, 747). At the same time, specialized adjudicators' familiarity with relevant areas of law provides a better understanding of the factual complexities, and cases may be administered in a more expeditious manner (Kesan and Ball 2011, 408–09). However, some scholars have argued that a specialized adjudicative body may decrease the quality of a decision because only inferior adjudicators will seek assignment in such courts (Revesz 1990, 1154).[4]

A possible consequence of specialization particularly relevant to the dominion model is that specialization may distort the application of the review standard. The value of expertise may be proportional to the scope of review applied by the specialized court,[5] which may cause specialized courts to dominate in a way that legislators would wish to avoid (Bruff 1991, 332; Gilboy 1988, 515–79).[6]

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[4] Some scholars also consider the generalist adjudicator's perspective to be an asset that a specialized unit cannot offer. For instance, Bruff argues that sound decision making results from the exposure to a wide range of problems (1991, 331), and Posner (1983, 786–90) argues that generalist judges can deal with unforeseen changes in the caseload mix because their docket always requires this flexibility, and that specialists grow apathetic due to monotony.

[5] Legomsky (1990) argues that on questions of fact, expertise can aid adjudication in several ways: "One who adjudicates many cases in the same field might acquire familiarity with the more frequently employed expert witnesses and thus an enhanced accuracy in judging credibility; that expertise can permit more knowledgeable assessment of technical data drawn from fields like economics, science, medicine, or engineering; and that if the hearing procedure permits the adjudicator to ask questions, experience in the area can enable him or her to identify lines of inquiry that the parties or their representatives have missed" (Legomsky 1990, 7–20).

[6] South Africa is a good example of how specialization may distort the scope of review. In this regard, Davis and Granville explain that members of the Competition Tribunal have expressed

Legislators, essentially purchase the products of judges by creating and funding them. Some may seek more aggressive and less deferential court review of the actions of agencies, while others may want soft and deferential judicial review, not allowing the judges to make policy decisions. Their level of distrust of agencies likely determines legislators' preferences. It would be natural for legislators' party affiliation in relation to the governor's affiliation to determine these preferences.

In a related aspect of specialization, it presents a tradeoff between expertise and independence (Shapiro 1968; Bruff 1991, 360). Indeed, recent research has demonstrated the connection between specialization and insulation from the political process, and therefore a risk of being captured and biased (Baum 2010, 1535; Kesan and Ball 2011, 407; Revesz 1990, 1147). Research suggests the continuum of specialization correlates directly with independence. Specialization may lead to impartiality because only a few lawyers will be attracted or even eligible to serve in a specialized court; the narrow field makes it more difficult for appointers to select based on factors such as party affiliation. However, adjudicators become specialists once they are serving in the specialized body, gaining experience in the field more quickly than judges in a generalist court. Further, litigants and lawyers that participate in the adjudicative entity may influence court decisions, and the opportunity to become a repeat player provides greater incentives to seek influence over a specialized body. As repeat players, they become familiar with the adjudicators involved, acquainted with the court's rules, and likely to be positioned to identify suitable vehicles to argue changes in the law that they desire (Dreyfuss 1990, 380; Baum 2010, 1536). To the extent that legislators recognize that the political branches of government will find a specialized court easier than a generalist court to monitor and control, both through

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frustration with the willingness of the Competition Appeal Court to overturn its decisions not only on issues of procedure but also on evidence assessment and issues of fact and law.

the appointment process and in the conduct of its work, this may affect their decisions (Posner 1983, 783).

III. Design of administrative courts in Mexico

In some states in Mexico, legislators have created separate specialized courts with administrative jurisdiction while others gave jurisdiction to already existing courts. In either case, some states limited administrative courts' jurisdiction to administrative or tax issues while others gave them greater jurisdiction to include electoral and civil issues. I will use Revesz' (1990) characterization of specialized jurisdiction to classify the Mexican case as exclusive specialization or limited specialization. Exclusivity refers to whether a court hears *every* case within its specialization, while limitation refers to whether a court *only* hears such cases, rather than hearing a range of cases (Revesz 1990, 1121).[7] A court staffed by specialized judges will be limited; a court staffed by judges who generally sit in district or regional circuit courts would not, if the creators assign the generalist judge on a part time basis (Revesz 1990, 1130–32). The administrative court might supplant the reviewing function of the generalist courts or serve as subordinate to generalist courts (Revesz 1990, 1133).

All Mexican administrative courts hear every administrative case at the state level. Therefore, all have exclusivity. However, not all of them enjoy the same degree of limited specialization. Some hear only administrative and tax cases, while others also hear electoral, constitutional, or civil cases. I will measure the degree of specialization of administrative courts

[7] Revesz' second criterion refers to adjudicators' level of expertise, and third criterion refers to whether a specialized court is subject to review by a generalist or specialist court (Revesz 1990, 1137–39). Both significantly affect the functioning of administrative courts, but for the purposes of evaluating independence I will focus on his first criterion in this chapter.

with two variables: 1. the incorporation of administrative jurisdiction to a separate specialized court or to an already general existing court and 2. the limited jurisdiction assigned to the court. All separate specialized courts are limited in jurisdiction. Therefore, I will assume that such separate courts are the most specialized ones. Table 14 shows such variation and its evolution through time.

Table 14. Degree of specialization of Mexican administrative courts

State (year)	Separate specialized court	Degree of specialization (limitation)	Amendment (year)	New specialized court	Degree of specialization
Tamaulipas (1951)	Separate specialized court	Only tax and administrative cases			
State of Mexico (1970)	Separate specialized court	Only tax and administrative cases			
Veracruz (1975)	Separate specialized court	Only tax and administrative cases			
Sinaloa (1976)	Separate specialized court	Only tax and administrative cases			
Sonora (1977)	Separate specialized court	Only tax and administrative cases			
Hidalgo (1979)	Separate specialized court	Only tax and administrative cases			
Chiapas (1981)	Separate specialized court	Only tax and administrative cases	(1988)	Incorporated to the judiciary	Only tax and administrative cases
Jalisco (1983)	Separate specialized court	Only tax and administrative cases			
Guanajuato (1984)	Separate specialized court	Only tax and administrative cases			
Queretaro (1985)	Separate specialized court	Only tax and administrative cases			
Guerrero (1987)	Separate specialized court	Only tax and administrative cases			
Yucatan (1987)	Separate specialized court	Only tax and administrative cases	(2010)	Incorporated to the electoral court	Tax, administrative and electoral issues
Baja California (1988)	Separate specialized court	Only tax and administrative cases			
Colima (1988)	Separate specialized court	Only tax and administrative cases			
Durango (1988)	Separate specialized court	Only tax and administrative cases	(2000)	Incorporated to the judiciary	Only tax and administrative cases

Table 14, continued

Morelos (1989)	Separate specialized court	Only tax and administrative cases			
Nuevo Leon (1991)	Separate specialized court	Only tax and administrative cases			
San Luis Potosi (1993)	Separate specialized court	Only tax and administrative cases			
Baja California Sur (1994)	Separate specialized court	Only tax and administrative cases	(2004)	Incorporated to the judiciary	Tax, administrative and civil issues
Chihuahua (1994)	New specialized court	Only tax and administrative cases	(2013)	Incorporated to the electoral court	Tax, administrative and electoral issues
Campeche (1996)	Incorporated to the judiciary	Tax, administrative and electoral issues			
Tabasco (1996)	Separate specialized court	Only tax and administrative cases			
Zacatecas (1998)	Separate specialized court	Only tax and administrative cases			
Aguascalientes (1999)	Separate specialized court	Only tax and administrative cases	(2012)	Incorporated to the judiciary	Tax, administrative and electoral issues
Oaxaca (2000)	Separate specialized court	Only tax and administrative cases			
Nayarit (2001)	Separate specialized court	Only tax and administrative cases			
Tlaxcala (2001)	Incorporated to the judiciary	Tax, administrative and electoral issues			
Quintana Roo (2003)	Incorporated to the judiciary	Tax, administrative and constitutional issues			
Michoacan (2006)	Separate specialized court	Only tax and administrative cases			

Ninety percent of the administrative courts were created as separate specialized courts with limited jurisdiction. However, by 2014 only 69% of the administrative courts were still separate specialized courts and only 72% have limited jurisdiction. The next section will analyze this observable trend towards incorporating administrative jurisdiction to courts with broader jurisdiction.

IV. Empirical analysis

This empirical analysis will analyze the influence of political parties' variables on (1) the decision to assign administrative jurisdiction to a separate specialized court or to an already existing court and (2) the decision whether to limit the administrative court. It will also analyze the influence of political parties' variables on the specialization of administrative courts through time.

The data that encompasses the state legislatures' periods starting from the period in which the court was created and ending in the period 2010–2013 bears on this analysis. Independent variables explaining both the creation of new specialized courts and the design of each court are as follows:

a. Difference-Seats captures both the strength of the political party and the degree of uncertainty. The difference between seat shares of the strongest and second strongest parties in the legislature measure this variable.

b. Herfindahl-Hirschman Index (HHI) measures the concentration of power a political party has over a legislature. The calculation requires determining the legislature share of each political party, squaring each political party percentage within the legislature, and adding the resulting figures together (Cohen and Sullivan 1983: 476).

c. Divided government is a binominal variable establishing if the governor shares political affiliation with majority of sitting legislators (1) or has a different political affiliation (2).

d. New Political Party Governor captures the existence of a governor having a different political party affiliation from the previous governor's.

Dependent variables for the analysis will be the feature designs of administrative courts regarding specialization. Table 15 describes each of these variables.

Table 15. Dependent variables Chapter III

Variable		Code	
Separate specialized court	Dummy variable describing if administrative jurisdiction was incorporated to an existing court or to a separate specialized court	Jurisdictions incorporated to an existing court	0
		Jurisdictions incorporated to a new specialized court	1
Limited jurisdiction	Dummy variable describing the degree of specialization of the court.	Courts hearing not only tax and administrative cases	0
		Courts hearing only tax and administrative cases	1

The hypotheses to be tested are based on the insurance and the dominion model. The insurance model, suggests that legislators will prefer specialized courts when looking for accuracy due to uncertainty (Ginsburg 2006). The dominion model suggests that legislators will prefer to assign administrative jurisdiction to already existing courts, i.e., less specialization, when uncertainty leads them to seek to monitor bureaucrats appointed by old regimes.

Using these models I developed the following hypotheses:

5. The lower the difference of seat shares of the strongest and second strongest parties in the legislature, the higher the probability of assigning administrative jurisdiction to a new court and the higher the probability of limiting its jurisdiction. The model describing this hypothesis is:

   Administrative court specialization= $\alpha + \beta Difference Seats it + \delta t + \gamma i + \sum it$

6. The higher the political party concentration within a legislature, the lower the probability of assigning administrative jurisdiction to a new court and the lower the probability of limiting its jurisdiction. The model describing this hypothesis is:

   Administrative court specialization= $\alpha + \beta Difference Seats it + \delta t + \gamma i + \sum it$

7. When different parties dominate the legislative and executive branches, legislators are more likely to assign administrative jurisdiction to a new court and more likely to limit its jurisdiction. The model describing this hypothesis is:

$$\text{Administrative court specialization} = \alpha + \beta PRIGovLegit + \delta t + \gamma i + \sum it$$

8. When a governor's party differs from his or her predecessor's, the legislature is less likely to assign administrative jurisdiction to a new court and to limit its jurisdiction. The model describing this hypothesis is:

$$\text{Administrative court specialization} = \alpha + \beta NewGovit + \delta t + \gamma i + \sum it$$

V. Findings and implications

Administrative courts' specialization when created: To analyze administrative courts' degree of specialization at the time of creation I used a time-fixed effects regression over each variable to test the effect of each of the independent variables. However, it is important to notice the limits of the analysis since the total observations are only 29. Table 16 shows the results of analyzing courts' design features related to independence of administrative courts at the time of creation.

Table 16. OLS regression with year fixed effects of courts' specialization when created

Specialization:	Separate specialized court		Limited jurisdiction	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	-.0065935 (.0102998)	0.533	.0000603 (.0148028)	0.997
HHI	.2042925 (.8511787)	0.814	.4791509 (.3485452)	0.182
Divided government	.0040332 (.2054003)	0.985	-.2236289 (.2991181)	0.462
New governor	-.0359492 (.2163513)	0.871	-.0292928 (.2515867)	0.908
R^2	0.8442		0.1744	
N	29		29	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As Table 16 shows, none of the independent variables developed is helpful for explaining the degree of specialization of administrative courts at the time of creation.

Administrative courts' specialization evolution. To analyze administrative courts' degree of specialization evolution, I used a state- and time-fixed effects regression over each variable to test the effect of each of the independent variables. The total number of observations includes only periods in which courts were created until periods in which courts varied their design. Table 17 shows the results of the analysis.

Table 17. OLS regression with state and year fixed effects of courts' specialization evolution

Specialization:	Separate specialized court		Limited jurisdiction	
	Coefficient	*p*-value (95% C.I)	Coefficient	*p*-value (95% C.I)
Difference-Seats	-.0105051 (.0032936)	0.002*	-.005509 (.0030635)	0.074
HHI	.2754682 (.221263)	0.215	.4510116 (.2058048)	0.030*
Divided government	.0118306 (.0460335)	0.797	-.0063423 (.0428175)	0.882
New governor	-.0747376 (.039196)	0.058	-.0558481 (.0364577)	0.127
R^2	0.7656		0.7539	
N	230		230	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As Table 17 shows, the only variable explaining the evolution of administrative courts' degree of specialization measured by the existence of a separate specialized court was Difference-seats. The variable showed a negative correlation with the creation of new specialized courts. Therefore, the larger the difference in seats and the stronger the dominant party within congress, the lower the probability of assigning administrative jurisdiction to a new court; smaller differences in seats had the opposite effects. This suggests the insurance model has explanatory power for describing the preference for new specialized courts.

Interestingly, for limited jurisdiction, the only explanatory variable was the Herfindahl-Hirschman Index. The correlation shows a strong effect. However, the sign of it was positive. Therefore, the higher the concentration of power of a political party within the legislature, the lower the probability of limiting the jurisdiction of an administrative court will be. This finding suggests that the stronger the political party within the legislature, the lower the preference for specialized courts, which contradicts the hypothesis developed in this chapter.

VI. Summary

The general overview at the state level shows that Mexico's administrative courts' have become less specialized over time. While the majority of these courts remain specialized, incorporation to electoral courts or to the judicial branch has increased over time. The empirical analysis described here has addressed the factors leading to this change.

The insurance model predicted in general terms that uncertainty or a lower percentage of the dominant political party within a legislature increase the probability of creating new specialized courts with limited jurisdiction. Seeking to preserve the bargain, legislators will prefer specialized courts, which are more accurate when deciding cases. The dominion model provided a specific divergence from this hypothesis, stating that regardless of uncertainty, the divergence between legislatures' majoritarian political party and governor political party, or between an existing governor and her predecessor, will increase the probability of assigning administrative jurisdiction to a general court or not limiting its jurisdiction. Desiring to control bureaucrats they will prefer support court independence and therefore avoid specialization.

However, none of the independent variables had explanatory power regarding specialization of administrative courts at the time of creation. Neither the decision to assign

administrative jurisdiction to a new specialized court or to limit its jurisdiction correlated directly with political variables. However, regarding the empirical analysis of administrative courts' specialization evolution, after testing the insurance and the dominion models using OLS time and state fixed effects regressions, I found that the insurance model predicts the creation of separate specialized courts. The lower the difference of seat shares of the strongest and second strongest parties in the legislature, the higher the probability of assigning administrative jurisdiction to a new court. This finding confirms the hypothesis that under uncertainty legislators will look for accuracy.

Interestingly, for limited jurisdiction the only explanatory variable was the Herfindahl-Hirschman Index. However, the correlation showed a positive sign, contradicting the insurance model hypothesis. Regarding this finding, it is important to point out that the variable capturing the most relevant characteristics of specialization is a separate specialized court, since all separate specialized courts are limited in jurisdiction and their judges hear only administrative and tax cases. Limited jurisdiction, on the other hand, only controls for limited jurisdiction within those courts incorporated to the judicial branch. Therefore, the findings may suggest that the only significant variable explaining specialization of administrative courts is difference-seats.

As for the dominion model, my findings suggest that the dominion model does not predict the creation of new specialized administrative courts or the limiting of their jurisdiction.

Chapter IV. Administrative courts and the improvement of government performance

In Chapters I and II, I analyzed legislatures' decisions to create and design administrative courts, in which citizens bring suits as plaintiffs when they believe the government is not complying with its obligations. Therefore, administrative courts serve a fire-alarm function, in which a large number of lawsuits filed against the government signal government failure. However, the function of administrative courts goes beyond this; case outcomes should influence both citizens' and governments' future actions. In the ideal case, administrative courts should produce ex-ante deterrence effects of governments' wrongdoings, which require sound legal rules of litigation. Legal rules influence citizens' decisions to file a suit and case outcomes, and, in repeated games, outcomes determine citizens' decisions to sue and government agents' expected costs of a wrongdoing. Ultimately, the mere risk of litigation may deter governments from ignoring the rules. This fourth chapter will analyze the effects that procedural rules' design in administrative trials may have on parties' incentives and propose a specific design of procedural rules to achieve the monitoring function of administrative courts.

I. Introduction

As this dissertation has noted, the judicial resolution of conflicts between government and citizens theoretically not only addresses citizens' complaints (i.e., if the agency has acted according to the law) but also monitors and improves government action. This chapter will use the game theory model created by Bernardo, Talley, and Welch in 2000 (Bernardo, Talley et al. 2000) to analyze how litigation leads or can lead to both addressing such disputes and improving

government action. This model suits the purpose because it implies a principal-agent two-stage model, in which litigation plays an important role for controlling shirking of agents ex-ante; and because its assumptions apply perfectly to administrative litigation characteristics. The model involves stages that occur over time sequentially, not simultaneously, and applies to situations in which the agent cannot receive compensation for carrying out extra effort. In the first stage, the agent makes an unobservable and unverifiable decision about how much effort to expend in furtherance of the principal's venture. In the second stage, a principal may decide to sue the agent.[1]

The game is solved backwards, starting with the second stage and ending with the first stage. Governments hire bureaucrats to execute laws. The model assumes that in performing their duties, bureaucrats, the agents, make private, non-monitorable decisions about whether to expend high effort or low effort. Citizens, the principals, benefit when bureaucrats expend effort and are harmed when they do not. "The principal observes only the outcome since she is unable to observe the agent's actual effort choice directly" (Bernardo, Talley, and Welch 1999, 7). When harmed, the principal may file a lawsuit against the agent, which a judge decides.

The ideal set of rules would allow judges to decide the case in favor of the agent that has accomplished its tasks in accordance with the law and in favor of the plaintiff when the agent hasn't. This set of rules should also impose high litigation costs on agents that shirk and low litigation costs on agents that do not. To accomplish such functions, administrative courts must

[1] Using this model, Bernardo, Talley, and Welch analyze the effect of legal presumptions as variables that influence the costs of litigation of plaintiffs and defendants. Their main findings are that "A marginal change of the underlying presumption in the defendant's favor can lead to a higher litigation rate and even a higher win rate for plaintiffs in equilibrium: although pro-defendant presumptions make it more difficult for plaintiffs to win in any given case, the more protective rule also skews defendants' ex ante behavior toward shirking."

guarantee impartial decisions made by independent judges as well as procedural balance among parties in the trial.

Rules of standing, legal presumptions, rules that empower courts to help one of the parties while deciding a case, relief and monetary damages, and courts' enforcement capacities all influence case outcomes. Using the game above described I will analyze such rules in order to propose a specific design in order to achieve administrative courts' purpose of monitoring agencies' performance.

This chapter is divided as follows: In the first part, I will describe the economic model that will capture the interaction between citizens and agencies. In the second part, I will analyze procedural rules and legal presumptions in the national Mexican administrative litigation system. Finally the third part will include a qualitative analysis of procedural rules in Mexico based on the model.

II. The principal-agent model

By using a game theory model that captures a principal-agent relationship, I will capture the different interactions between citizens and their governments before and after litigation. Other scholars have used similar approaches. Bershteyn (2004) has applied game theory to analyze judges' choice of remedies in administrative law.[2] Empirical studies have analyzed the relationship between judicial and administrative decision-making (Halliday 2004; Pierce 1989). More recently, Garoupa and Mathews (2014) offered a theory to explain cross-national variation

[2] Bershteyn describes the game as a Congress delegating rulemaking authority to an agency, expecting it to adopt a specific policy. Then the agency adopts a different policy, and it is the court that decides the controversy.

in administrative law doctrines and practices using a game in which players are courts, agencies, and legislatures. However, none of these studies attempt to analyze the influence of administrative courts' rules in agencies' action.

Bernardo, Talley, and Welch's (2000) model states that agents deciding how much effort to invest in their tasks experience a moral hazard when their interests do not align with the principal's. Consequently this first stage may create agency costs, unless the principal can alleviate the moral hazard by compensating the agent's effort. However, if the principal cannot align the interests of the agent through awards or compensations, she may decide to sue the agent for shirking, a decision that comprises the model's second stage. The principal's decision will depend on the expected benefits of winning the case minus the expected costs of doing so; principals will only sue when the benefits of winning exceed the costs. It is important to note that even though this second stage may reduce the first stage's agency costs, it can generate its own kind of social costs. For example lawsuits may impose both fixed and variable costs on participants. The game is solved backwards, starting from the litigation stage and ending with the principal-agent stage, because the agent's decision as to how much effort to exert rests on her risk of getting sued and losing.

Bernardo, Talley, and Welch (2000) did not propose their model for the analysis of administrative litigation specifically; they limited their scope to the analysis of legal presumptions. In applying their model to administrative litigation in Mexico, I rely on the fact that the models' characteristics and assumptions are almost identical to those applied to the relationships between citizens and their governments. That is, bureaucrats have no possibility of receiving compensation for greater efforts—they all function on a fixed-wage contract regardless of their performance—but may expend extra effort to avoid a lawsuit. Second, most jurisdictions

in Mexico prohibit settlements in administrative cases, except in private contracts between the executive agents and private parties.[3]

For the purpose of applying the model to the solution of administrative law disputes I will establish a parallel between the principal-agent relationship and the citizen-government relationship. Other scholars have used the principal-agent model to analyze different types of relationships between government agents and citizens (as multiple principals) (Miller 2005; Moe 1987). A number have used the model to analyze problems generated by the delegation of legislative power to the executive branch (Aranson 1982, Weingast 1983; Cook and Wood 1989; Kiewiet 1991; Hammond and Knott 1996; Spence 1997; McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1999, 2007). In a democratic state, Congress represents citizens' preferences. Statutes (administrative laws) set some of these preferences which will subsequently need execution by the executive branch (McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1987). This delegation may create the principal-agent problem (McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 2007). Congresses, governments, and citizens expect agents to perform their duties in the best manner they can. However, while doing their job bureaucrats (agents) will maximize their own interests, which might diverge from the citizens' (principals') interest (McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1999, Gersen and O'Connell 2008).

[3] Chilling, Settlement and the Accuracy of the Legal Process (Friedman and Wickelgren 2008) addresses prohibition to settle, demonstrating that settlements can lower social welfare because they reduce the accuracy of legal outcomes; reducing this accuracy reduces the ability of the law to deter harmful activity made by the government. Thus prohibiting settlement may generate more social welfare than allowing it. In this case chilling may not have a large cost since most government activities are mandatory.

The second stage of the model is litigation. Many scholars have compared litigation to settlement (see for example Gould 1973; Bebchuk 1984; Priest and Klein 1984; Reinganum and Wilde 1986, Bebchuk 1988; Spyer 1992; Bebchuk 1996; Daughety and Reinganum 2005).[4] A large majority of cases in the United States' courts settle, and parties will voluntarily transact if a mutually beneficial transaction exists. The small fraction of disputes that end in a trial exists because settlement negotiations fail when parties conclude that no mutually beneficial outcomes exist. This may be a consequence of divergent perceptions in parties' expected payoffs from the trial. Given trial is the only available mechanism to resolve disputes once a citizen has filed a suit in Mexico's administrative courts, citizens will decide whether to file based on their perceptions of their expected benefits from a trial.

Another important aspect of the rules involves the social costs both stages of the model impose. In the first stage, shirking generates agency costs, while in the second stage excessive litigation generates social costs. The ideal scenario will minimize the sum of both costs, in which administrative litigation addresses disputes between citizens and agencies effectively and improves agencies' performance ex-ante. However, this scenario will depend on whether citizens and agents alike perceive procedural rules as pro-citizen or pro-government.

A perception that rules are pro-citizen gives citizens a higher incentive to initiate litigation, since they have a higher probability of winning the case. The agent, anticipating this, will invest more effort to avoid litigation and the costs of losing the trial. This effort will result in an

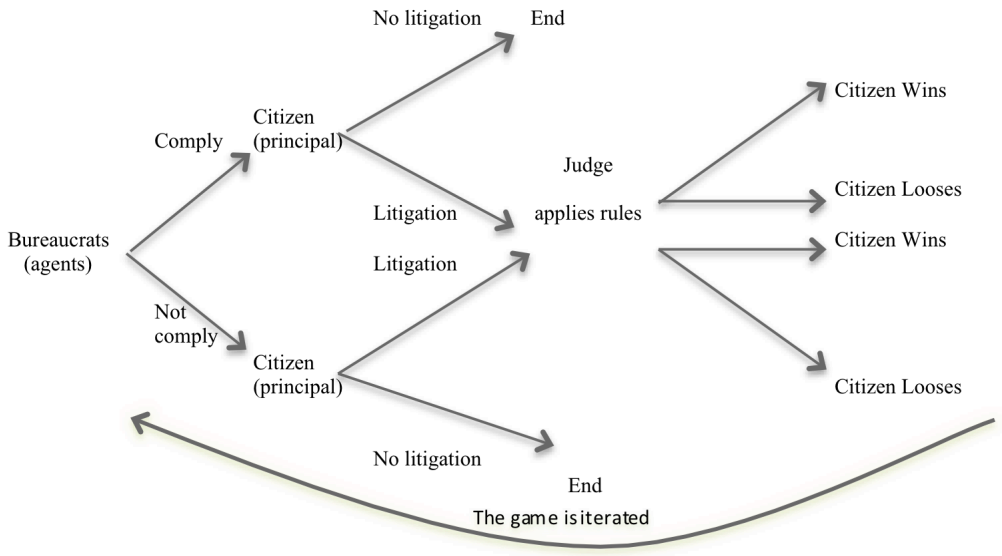
[4] The model is based on the parties' perception of the plaintiff's chance of winning at trial. Settlements occur when the sum of the costs to the plaintiff and to the defendant exceeds the product of the judgment award and the difference between plaintiff's perception of plaintiffs' chance of winning and defendant's perception of plaintiffs' chance of winning. Based on the model: (a) There should always be settlement when the parties have the same perception of the plaintiff's chance of winning at trial. (b) Greater divergence of perception between parties should lead to more trials. (c) Higher stakes should generate more trials. (d) Lower litigation costs should lead to more trials.

increase in the agent's chances of prevailing in court. This in turn will deter the principal from suing the agent. Thus, because of this interaction of stages and the strategic action of the agent, the implementation of rules that clearly benefit citizens may result not only in the decrease of lawsuits but also in the increase of agents winning trials in the long run. Pro-citizen rules thus decrease agency costs while increasing litigation costs.

On the other hand, a perception that courts have pro-government rules will deter citizens from filing suit. In turn, the agents, recognizing this deterrence, will tend to invest less effort in avoiding litigation. Consequently, agents will lose more cases, and incur a higher likelihood of being sued, depending on how biased the rules are. Thus claims against agents and principals' success rates may increase. Litigation costs would increase but agency costs would decrease. However, it is important to point out that there are competing effects: winning rates due to pro-government rules (which will decrease the number of lawsuits) and government actors decrease investment in effort (which will increase the number of lawsuits). The dominant effect will depend on which effect is stronger, and in particular how many more citizens bring suits because of bad agent behavior and how many fewer suits occur because of pro-government rules.

Neither rules favoring the principal nor rules favoring the agent will reach the most efficient result. Minimizing both types of social costs—suing and shirking—requires rules that guarantee impartial decisions and procedural balance among parties. As Bernardo, et al. note, "Whenever the procedural rules set no previous advantages for either party, the agent cannot predict the likelihood of being sued for what they have incentives to act in the best way" (2000). Figure 6 illustrates the game.

Figure 6. Administrative litigation game (extended form)



According to this model, for litigation to work as a deterrent for agents, the following conditions should exist:

a. Agents should see litigation as a real threat. Therefore, initial suing costs, including rules of standing, should not be too high as to deter lawsuits.

b. Rules should not impose extra costs on either party. No procedural rules should clearly favor either party.

c. Litigation should not result in sunk costs. This means that the prevailing party should be compensated for the damages generated by the illegal act of the other party. Compensation will encourage litigation in all cases, including high and low damages, which will result in better performance of agents.

In addition, rules of design must guarantee impartial decisions made by independent judges applying balanced procedural rules, the subject of the next section.

III. Procedural rules in Mexican administrative courts

Administrative adjudication refers to the mode of reviewing decisions made by officials and agencies at the request of the affected individual(s), corporation(s), or group(s) (Cane 2010).[5] When administrative courts perform this review, two categories classify the litigation rules: substantive and procedural rules. Substantive rules, established by Congress, establish the agent's powers, obligations, and limits. Judges decide if the agent acted in accordance with these substantive rules. Procedural rules govern the litigation process and establish the requirements to file a lawsuit, rules of evidence, the burden of proof, the remedies available to the agent, and whether parties can be represented by a lawyer. In other words, procedural rules establish how principals initiate litigation, proving facts and law, allocating costs of litigation between the parties, and determining damages. Substantive rules, obviously, influence winning rates because they form the crucial context for evaluating agents' behavior. However, rules of procedure also influence parties' chances of winning (Friedman and Wickelgren 2008). That is, standing rules, rules of evidence (Sanchirico 2008; Kaplow 2011), and legal presumptions that determine damages (Kaplow and Shavell 1996) play a major role in the agent's perception of the cost of being sued and likelihood of winning the case.

Professors Asimow and Lubbers' classification of adjudicating models provides a starting point for my description of procedural rules regarding judicial review (Asimow and Lubbers 2011). They introduce two ways in which judicial reviews vary: jurisdiction, and open/closed.[6]

[5] Cane (2011) defines administrative adjudication as "a mechanism for resolving disputes between individuals and the government, which arise from decisions of officials and agencies."

[6] Their five model categorization includes the adversarial hearing/combined function/limited judicial review model; the inquisitorial hearing/combined function/limited judicial review, the tribunal system, the de novo judicial review/general jurisdiction, and the de novo judicial review/specialized jurisdiction. The United States uses the adversarial hearing/combined

Jurisdiction refers to whether it is performed by generalized jurisdiction or by specialized administrative courts. Open judicial review allows either party to introduce new evidence in court; a closed system bars parties from introducing new evidence (Asimow 2015).

Mexico's form of open judicial review/specialized jurisdiction requires agencies to make the initial decision in compliance with constitutional guarantees that include due process. Citizens have two ways to challenge agencies' actions: to ask for reconsideration within the agency, or for judicial review by the administrative courts, which are specialized tribunals.[7] Citizens need not ask for reconsideration within the agency[8] but can go directly to an administrative court without impediment. They can also go to court if they have asked for reconsideration and not achieved the desired result.

Mexico allows every citizen harmed by a local executive agency's decision to challenge it. Administrative courts determine whether the administrative agency followed the rules of

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function/limited judicial review model, in which the agency makes the initial decision by an administrative judge and the reconsideration phase occurs within the agency. Courts of general jurisdiction do judicial review; the review addresses the legality and reasonableness of the agency's decision but involves no reexamination of evidence to substitute judgment on the merits of the case. The European Union uses the inquisitorial hearing/combined function/limited judicial review. The agency makes the initial decision in this model; a different agent makes reconsideration; judicial review is made in courts of general jurisdiction, like Argentina. The tribunal system, calls on a tribunal separate from the prosecuting and enforcing agency makes the initial decision and the reconsideration decision; generalized courts with limited powers over issues of fact or discretion provide judicial review. China uses the de novo judicial review/general jurisdiction, which involves an initial decision and reconsideration by the agency; general courts make judicial review and may retry the case. France, Germany, and Mexico use the de novo judicial review/specialized jurisdiction model. Agencies make the initial decision and reconsideration, and specialized courts hearing only administrative law cases make review of initial decisions.

[7] Citizens who allege an agency violated the Federal Constitution can challenge government decisions via *amparo*.

[8] The official who determines whether to grant the petition may be the same officer who issued the initial decision, his or her superior, or a special body within the agency; however, most agencies assign an officer different from the one who issued the initial decision. Reconsideration is structured as a trial and parties have the opportunity to offer evidence although there is no formal hearing.

decision-making established in statutes, using specific procedures called nullity trials. Consequently administrative courts have the power to void executive agency's decisions. Table 18 describes some of the procedural characteristics of this type of trial:

Table 18. Nullity trials characteristics in Mexico

Reviewability:	General rule: every government decision that harms a citizen is reviewable by administrative courts.
Object of trial:	Generally, only agencies' individual final decision (adjudication as opposed to rulemaking) can be the object of a trial. Some courts (like the federal one) also permit trials against rulemaking processes, although only plaintiffs who suffered actual harm from the rules can bring such cases.
Lawyer-representation:	General rule: the legal framework does not require plaintiffs to be represented by a lawyer.
Standing:	Plaintiffs have to show real harm done by the government and must show that the agency acted in violation of an actual statute. Some states also require demonstrating a duty owed to the plaintiff that has been violated.
Prudential requirements:	Statute establishes these standards. 1. Persons must be asserting their own interests and not the legal rights of unrelated others. 2. Issues must be particular to the person raising the demand, not a generalized grievance common to the population as a whole. 3. The law the complainant invokes must establish the protection or regulation of the interest whose injury she is seeking to redress (some states do not require this).
Finality:	General rule: final agency action. Exception: when a non-final government action harms a citizen.
Exhaustion:	Generally administrative court review does not require exhaustion. When exhaustion occasions undue prejudice to subsequent assertion of a court action, it is never required.
Ripeness:	Courts cannot entangle in abstract disagreements over policies, and also must protect agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by challenging parties.
Preliminary relief:	Can be granted in cases of: a. Probable success on the merits. b. Irreparable injury will happen without a stay. c. Where the issuance of a stay would significantly harm others. d. Public interest considerations.
Available judicial remedies	Any relief including monetary compensation. Orders of enforcement, declaratory judgments, compulsory orders directing the agency or its officials either to act or to refrain from acting, or judgments upholding or setting aside, in whole or in part, the results of agency action.

Administrative actions in local courts begin with the filing of a complaint by the plaintiff (who by definition is a citizen). The defendant (who by definition is a public officer) has a chance to offer evidence and respond to the complaint. Judges may issue three outcomes: dismissal, lawfulness, or unlawfulness. Dismissals occur when judges do not analyze the defendant's action because the plaintiff has not complied with formal requirements, such as

standing or ripeness rules. Lawfulness signifies that the defendant complied with administrative rules, while unlawfulness is a finding that the agency did not, a loss for the government.

The rules of procedure and relief relevant to my argument are: a. rules of standing; b. legal presumptions (burden of proof); c. rules that empower courts to "help" one of the parties; d. rules of relief; and e. court enforcement rules.

a. Rules of standing

As in the United States, the Mexican legal system requires plaintiffs to prove an injury in fact by demonstrating that the injury was concrete and particular, actual or imminent, that there was a causal connection between the injury and the government's action, and that a favorable decision could lead to redress. Across Mexico's 30 state-level administrative courts, there are two types of rules of standing: "legitimate interest" and "legal interest." The former permits review of agency action by any person adversely affected or aggrieved by any agency action. The latter gives standing to any person with legitimate interest unless she is in violation of applicable laws. Both rules require plaintiffs to prove an injury in fact. However, the legal interest rule limits standing to plaintiffs who can prove not only the injury in fact but the possession of a right to perform the plaintiffs' activity. The main difference between these rules is that the legal interest rule requires plaintiffs to prove an injury in fact *and* the existence of a previous right; the legitimate interest rule only requires proving an injury in fact. The first rule clearly enables a wider range of people to challenge agency action.

Finally, regarding standing rules, a strong court must guarantee wide access to parties. In the case of administrative courts, citizens must be able to access administrative courts in order to challenge governments' unlawful actions. Therefore, standing rules must ensure that the cost of accessing administrative courts is not too high.

b. Legal presumptions

Legal presumptions permit judges to make inferences from available evidence. These presumptions are always subject to rebuttal by the affected party. The most direct consequence of a presumption is the allocation of the burden of proof to one of the parties. In administrative litigation in every court of administrative matters in Mexico, plaintiffs bear the burden of proof in challenging an administrative act.

c. Rules that empower courts to assist one of the parties

Several of Mexico's administrative courts permit judges to fill gaps in citizens' claims. They can suggest and analyze arguments the plaintiff has not addressed, although they cannot consider facts not described by the plaintiff. These rules, permitting the replacement of complaint, recognize the inequality between citizens and public agents.

d. Relief and monetary liability

Mexico's administrative courts follow two types of rules: limited relief rules and total relief rules. Limited relief rules permit the court to issue any relief except money. Judges can make orders of enforcement, declaratory judgments, compulsory orders directing the agency or its officials either to act or to refrain from acting, or judgments upholding or setting aside, in whole or in part, the results of agency action. The United States uses limited relief rules against administrators (Strauss 2002).

Total relief rules permit all of the remedies of limited relief rules, as well as monetary damages for acts that violate statutory norms.[9] Only in a small fraction of Mexican administrative courts can citizens seek monetary damages. The essence of monetary liability (compensatory damages) is to restore the plaintiff to her rightful position. This means that the

[9] This remedy is different from tort claims against a variety of intentional or negligent behaviors by civil servants.

court restores the value of whatever losses the plaintiff suffered as a result of the defendant's wrongdoing to her when she wins.

e. Courts' enforcement capacity

Courts' mechanisms to enforce decisions include the power to impose fines. Courts must verify the failure to comply, and can impose a fine on a defendant who makes a false accusation of non-compliance. If the non-compliance persists, and the agent is the governor, some courts have the power to dismiss him or her, but must overcome first governors' immunity in order to effect the dismissal.

Table 19 summarizes the variance of the described procedural rules in Mexico. The only feature that does not vary is the legal presumption rule.

Table 19. Rules of procedure and relieves governing administrative trials when courts where created.

State	Standing rules	Legal presumption	Replacement of complaint	Monetary liability	Courts' enforcement capacity
Aguascalientes	Legitimate interest	Burden of proof to the citizen	No	No	Dismissal powers
Baja California	Legal interest	Burden of proof to the citizen	Yes	No	Dismissal powers
Baja California Sur	Legal interest	Burden of proof to the citizen	No	No	Dismissal powers
Campeche	Legal interest	Burden of proof to the citizen	No	No	Only fines
Chiapas	Legal interest	Burden of proof to the citizen	Yes	No	Dismissal powers
Colima	Legitimate interest	Burden of proof to the citizen	No	No	Only fines
Distrito Federal	Legitimate interest	Burden of proof to the citizen	Yes	No	Dismissal powers
Durango	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Dismissal powers
Estado de México	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Only fines
Guanajuato	Legal interest	Burden of proof to the citizen	Yes	No	Dismissal powers
Guerrero	Legitimate interest	Burden of proof to the citizen	No	No	Only fines
Hidalgo	Legal interest	Burden of proof to the citizen	Yes	No	Only fines
Jalisco	Legal interest	Burden of proof to the citizen	No	No	Dismissal powers
Michoacán	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Only fines
Morelos	Legitimate interest	Burden of proof to the citizen	No	No	Dismissal powers
Nayarit	Legitimate interest	Burden of proof to the citizen	No	Yes	Only fines
Nuevo León	Legal interest	Burden of proof to the citizen	No	No	Only fines
Oaxaca	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Only fines
Querétaro	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Dismissal powers
Quintana Roo	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Only fines
San Luis Potosí	Legitimate interest	Burden of proof to the citizen	Yes	No	Dismissal powers
Sinaloa	Legitimate interest	Burden of proof to the citizen	No	No	Only fines
Sonora	Legal interest	Burden of proof to the citizen	Yes	No	Only fines
Tabasco	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Only fines
Tamaulipas	Legal interest	Burden of proof to the citizen	No	No	Only fines
Tlaxcala	Legal interest	Burden of proof to the citizen	Yes	No	Only fines
Veracruz	Legitimate interest	Burden of proof to the citizen	Yes	Yes	Only fines
Yucatán	Legitimate interest	Burden of proof to the citizen	Yes	No	Only fines
Zacatecas	Legitimate interest	Burden of proof to the citizen	No	No	Dismissal powers

Most rules of procedure and relief governing administrative trials have changed little since the courts were created, but five jurisdictions are exceptions. Baja California empowered judges to replace complaints in 2007. In the same year, Chiapas, which had permitted replacement, prohibited it; the state also revoked the court's power to dismiss agents. The Federal District Court switched from legitimate interest to legal interest in 2006, back to legitimate interest in 2009, and then to legal interest in 2011. Durango's court originally had replacement of complaint, but no dismissal powers, but now has dismissal power but no power to replace complaints. Finally, San Luis Potosi empowered its courts to impose monetary damages in 2007.

IV. Qualitative analysis of procedural rules in Mexico

Procedural legal rules may have different effects on parties' incentives, depending on their nature and design. Governments are powerful litigants that have adequate means of defense and expertise. Governments are also repeat players equipped to litigate as part of their routine activity. As such, government has expertise; economies of scale; informal relations with institutional incumbents; ability to adopt optimal strategies; and other advantages in the litigation process (Galanter 1974, 347). Some impose costs of filing lawsuits on parties, while others clearly benefit a particular party. In order to apply the model I identified three procedural rules that clearly favored one of the parties in litigation trials. The first is the legal presumption rule, which allocates the burden of proof to the citizen. The second is the replacement of complaints rule, which empowers courts to "help" one of the parties, which, given the government's ex-ante advantage, I consider pro-citizen, means of compensating for the disadvantages of citizen as plaintiffs. Relief rules are the third category. I classified limited relief rules as pro-government

because the absence of monetary damages decreases governments' costs of losing a trial. Table 20 shows the classification of these rules in the various courts in Mexico during the period between 2007 and 2013.

Table 20. Pro-government rules in Mexico during the period between 2007 and 2013

State	Presumption	Monetary liability	Replacement of complaint
Aguascalientes	Pro-government	Pro-government	Pro-government
Baja California	Pro-government	Pro-government	Pro-citizens
Baja California Sur	Pro-government	Pro-government	Pro-government
Campeche	Pro-government	Pro-government	Pro-government
Chiapas	Pro-government	Pro-government	Pro-government
Colima	Pro-government	Pro-government	Pro-government
Distrito Federal	Pro-government	Pro-government	Pro-citizens
Durango	Pro-government	Pro-citizens	Pro-government
Estado de México	Pro-government	Pro-citizens	Pro-citizens
Guanajuato	Pro-government	Pro-citizens	Pro-citizens
Guerrero	Pro-government	Pro-government	Pro-citizens
Hidalgo	Pro-government	Pro-government	Pro-citizens
Jalisco	Pro-government	Pro-government	Pro-government
Michoacán	Pro-government	Pro-citizens	Pro-citizens
Morelos	Pro-government	Pro-government	Pro-government
Nayarit	Pro-government	Pro-citizens	Pro-government
Nuevo Leon	Pro-government	Pro-government	Pro-government
Oaxaca	Pro-government	Pro-citizens	Pro-citizens
Querétaro	Pro-government	Pro-citizens	Pro-citizens
Quintana Roo	Pro-government	Pro-citizens	Pro-government
San Luis Potosi	Pro-government	Pro-citizens	Pro-citizens
Sinaloa	Pro-government	Pro-government	Pro-government
Sonora	Pro-government	Pro-government	Pro-government
Tabasco	Pro-government	Pro-citizens	Pro-citizens
Tamaulipas	Pro-government	Pro-government	Pro-government
Tlaxcala	Pro-government	Pro-government	Pro-government
Veracruz	Pro-government	Pro-citizens	Pro-citizens
Yucatán	Pro-government	Pro-government	Pro-citizens
Zacatecas	Pro-government	Pro-government	Pro-government

As Table 20 reflects, procedural rules in administrative trials generally benefit the government as a defendant; few courts allow monetary damages in most of cases. Therefore, the

model predicts that plaintiffs will only bring cases when the harm is high and/or the probability of winning is high. These limitations will lead to shirking by agents, who do not see the likelihood of litigation as high, and consequently more plaintiff victories. This means that the probability of achieving the second goal of administrative litigation, improving government officers' performance, through the rules in most of Mexico's courts will be very low. While citizens' winning rates will be high, this reflects sub-utilization of administrative courts, rather than administrative courts' efficiency.

V. Summary

The purpose of this chapter was to argue that beyond the resolution of disputes between citizens and their governments, administrative litigation is a tool that, if properly designed, can generate the correct incentives to minimize illegal actions of executive agents within a particular government. If a harmed citizen does not obtain any compensation and does incur some costs by suing the government, she won't file a lawsuit. If citizens don't have incentives to file a lawsuit against the government, the likelihood of having courts as monitors of government agents is very low. In the end the citizens are the key to obtaining a low cost monitoring system of government agents. Which design will create sufficient incentives to improve agency performance?

This analysis has emphasized the design of the rules since the mere existence of litigation against the government does not necessarily accomplish improvements in government actions. Well-designed rules can generate incentives for opposing parties in administrative litigation by encouraging citizens to sue the government when harmed and by imposing costs on authorities for violations. On the other hand, poorly designed rules can have the opposite effect.

Through the parallel of the state-citizen to the principal-agent relationships, I use a game-theory model in two stages that allows me to predict the strategic behavior of parties when dealing with different procedural rules. The results of the game are straightforward; to ensure that the agent improves its ex-ante action, procedural rules have to be equitable for all parties. Systems where the rules favor the citizen may deter irregular activities but at the cost of excessive litigation. For the model to achieve deterrence of government violation of the law, agents must see litigation as a real threat, procedural rules have to be equitable, and litigation must not result in sunk costs (the winning party should be compensated). Variables affecting the first condition are standing rules. Variables affecting the second condition empower courts to assist one of the parties and courts' enforcement capacity. Variables affecting the third condition are relief and monetary liability rules.

In the specific case of Mexico, I showed how procedural rules in several administrative courts in Mexico could be classified as pro-government rules. Such analysis suggests that administrative litigation may not achieve deterrence. Moreover, because of the consequences of the model, litigation rates may be misleading. Therefore, although citizens' winning litigation rates are high in Mexico, the preponderance of pro-government rules suggests this may reflect underutilization of the courts, not a scarcity of violations by agencies.

Chapter V. Independence, institutional capacities and procedural rules influence on administrative courts' decisions[1]

The decisions of administrative courts create incentives, which this chapter will seek to analyze empirically. It will address whether the variation in the courts—the branch to which they belong, appointment procedures, judges' term lengths, institutional capacities, and procedural rules—changes the way administrative courts' judges review administrative action. In order to answer this question, I analyzed the behavior of judges empirically within twenty-three of Mexico's administrative courts, based on a dataset of more than 5,000 cases. This analysis addresses the influence of variables developed through this dissertation in administrative judges' actual decisions by classifying them as pro-citizen or pro-government. As this chapter will show, evidence suggests that institutional, procedural, and substantive rules design of administrative courts affect judges' decisions.

I. Introduction

Scholarship has been questioning the pure legal prototype of courts assumed in most of the legal systems with increasing frequency (Shapiro 1964; Shapiro 1981; Posner 1983; McCubbins, Mathew, Noll, Roger G. and Weingast, Barry R. 1995; Barak 2002; Shapiro and Sweet 2002; Fix-Fierro 2003; Ginsburg 2003; Tushnet 2009; Ginsburg 2007; Ginsburg 2008; Ginsburg and Moustafa 2008; Ginsburg 2009). Judicial behavior, these scholars suggest, can be explained through systematic, empirical, and theoretically-based research (Ferejohn 2009). At the same

[1] Please notice that part of this chapter was published as a coauthored paper with Ana Elena Fierro Ferraez and Sergio Lopez Ayllon at the Mexican Law Review. I have permission to include the co-authored material in this dissertation.

time, courts can be studied in terms of the interaction of judicial power with the political branches; as managers of huge organizations administering employees and budgets; or as institutions that revolve around the interpretation of rules, the creation of law, and the resolution of conflicts between parties.

Given this complexity, obtaining a real picture of what courts do requires theoretical and empirical perspective. Furthermore, the judge has to be analyzed as an agent affected by different factors such as the organization of the court of which he or she is a part, the rules applying to his or her job, his or her preferences and values, the political circumstances, and the interaction of the two other branches of the state.

Design divergence in Mexico makes the administrative courts an interesting laboratory to study the consequences of different institutional designs. Two datasets enable this analysis. The first reflects state constitutions and administrative courts' statutes. The second includes more than 5,000 cases decided by twenty-three administrative tribunals in Mexico.[2]

The chapter is organized as follows: Part II describes data, methodology and variables. Part III presents the findings and implications. Finally, part IV provides a summary.

II. Empirical analysis

The dataset includes a large-scale survey of administrative courts' decisions conducted by a group of Mexican researchers in the "*Diagnostico del Funcionamiento del Sistema de Imparticion de Justicia en Materia Administrativa a Nivel Nacional*" (Lopez-Ayllon 2010). This survey provides a dataset of 5,400 cases decided by 22 local administrative courts and the

[2] The data was collected as a result of a large scale survey of administrative courts decisions. The complete report and the databases are available at www.tribunalesadministrativos.cide.edu (Lopez-Ayllon 2010).

Federal District.[3] The researchers sought to analyze the performance of administrative courts in Mexico at a state level, and therefore collected court budgets; judges' curricula; internal organization; and case specifics such as dates, subjects, parties, quantities, decisions and appeals. The cases analyzed concluded in the years 2006, 2007, and 2008, although some courts were not created yet and therefore had no cases in 2006. I will term the decisions pro-government if they resulted in a dismissal or a finding of lawfulness, and pro-citizen if they resulted in a finding of unlawfulness. I added to this information characteristics such as the political party of judge's appointer, sex of the judge, year of creation of the court, judges' term length and the existence of provisions providing for the protection of judges' salaries. The state constitutions and the courts' web pages provide these specifics.

The dependent variable of the analysis will be pro-citizen decisions, in which the judge found that the agency did not comply with administrative rules. Such decisions were coded as 1, with others coded as 0.

Independent variables are defined as follows:

a. Judicial branch. Dummy variable describing the branch of government to which the court is assigned. Courts pertaining to the judicial branch were coded as 1, and 0 otherwise.

b. Non-executive nomination. The 23 courts use five types of appointments to designate judges, as described in Chapter II. The judiciary, legislative, and executive branches have varying levels of responsibility for proposing and approving [or confirming] judges. For the

[3] The Federal District participated in the study as well as the following states: Tamaulipas, Hidalgo, Querétaro, Guanajuato, Yucatán, Estado de Mexico, Baja California, Veracruz, Nuevo León, Sinaloa, San Luis Potosi, Colima, Campeche, Tabasco, Zacatecas, Tlaxcala, Nayarit, Durango, Baja California Sur, Aguascalientes, Oaxaca and Chiapas. The rest of the states did not want to participate in the study.

purposes of the research, I classified all of the procedures into two categories: The ones where the executive branch nominated judges (coded 0) and the ones in which it does not (coded 1).

c. Non-tenure judge. Since the database contained data regarding the judge that decided the case, I coded as 1 those judges enjoying tenure and 0 otherwise.

d. Protection of salaries. This variable describes whether a state constitution explicitly prohibits reducing judges' salaries. I coded the prohibition as 1 and its absence as 0.

e. Pro-citizen rules of standing: This variable refers to rules governing standing. Some courts permit citizens to bring suits that others would prohibit. The legitimate interest rule of standing requires low standing, in which plaintiffs must prove real harm but not the violation of a right; I term these pro-citizen. Legal interest rule of standing requires high standing, in which plaintiffs must prove real harm and the violation of a right; I term these pro-government. Those cases requiring legitimate interest (pro-citizen standing rule) were coded as 1 and those requiring legal interest 0. Those courts requiring plaintiffs to have more standing were classified as weak compared to those courts requiring less standing.

f. Monetary liability powers: This variable describes the type of decision a court is able to make. Those cases in which judges could impose monetary liability were coded as 1, others as 0. Those courts with more powers to impose liability to the executive were classified as strong in opposition to those courts with limited powers to impose liability to the executive.

g. Replacement of complaint powers. Cases permitting this were coded as 1, others as 0. Those courts prohibiting judges from filling gaps in citizens' claims were classified as weak compared to those courts with replacement complaint powers.

h. Enforcement capacities: Cases in which judges had the power to dismiss the defendant in case of non-compliance were coded as 1, all others as 0. Since the executive branch

is a powerful party in a trial, those courts with dismissal capacities were classified as strong courts.

Control variables for the second part of the empirical analysis are described as follows:

i. Type of plaintiff: I divided the cases into those brought by individuals (coded 0) and those brought by companies (coded 1). This division reflects the assumption that more resources may give companies an advantage individuals lack. They may also at times be they may be repeat players, enjoy the attending advantages which include the ability to structure the transaction; expertise; economies of scale; low start-up costs; informal relations with institutional incumbents; bargaining credibility; ability to adopt optimal strategies'; and ability to invest to secure penetration of favorable rules (Galanter 1974: 347)

j. Year in which the court was created: This variable controls for the age of the court because judges' experience level may influence outcomes.

k. HDI (2008): The Human Development Index is a United Nations Index that controls for specific states' characteristics because it measures the general wellbeing of the state. This index is the only one made for each state and incorporates various measures of economic and social variables.

III. Findings and implications

Table 21 shows the results of the linear regression (OLS) of the independent variables described above in order to identify factors that may explain the resolutions in favor of citizens. For ease of interpretation I show the results of the OLS regression. However, Annex I shows the results of the probit regression. Finally, I used year fixed-effects to control for specific changes over time.

It was not possible to use state fixed-effects because several variables did not vary from state to state.

Table 21. Influence of design variables over administrative courts' decisions (OLS)

Dependent variable:	Pro-citizens decisions	
	Coefficient	*p*-value (95% C.I)
Judicial branch	.2038226 (.0240009)	0.000*
Non-executive nomination	-.242846 (.019423)	0.000*
Non-tenure judge	-.1719466 (.0213426)	0.000*
Protection of salaries	.1844646 (.0166304)	0.000 *
Pro-citizen rules of standing	.1260683 (.0176005)	0.000 *
Monetary liability powers	.0786931 (.0264509)	0.003*
Replacement of complaints powers	-.0209195 (.0213673)	0.328
Enforcement capacities	.1683148 (.0179496)	0.000*
Type of plaintiff	-.1100004 (.01785)	0.000*
Year creation court	-.0070317 (.0009362)	0.000*
HDI	1.58873 (.2344888)	0.000*
R^2	0.1575	
N	5020	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

As Table 21 shows, except for replacement of complaint, all variables were significantly correlated with pro-citizen decisions. Judges in courts within the judicial branch support citizens' complaints more often. Judges nominated by the executive branch do not support citizens' complaints. Protection of salaries was also significant. Judges who enjoy an explicit constitutional protection for their salaries more often decide against the government. Pro-citizens

rules of standing were significantly and positively correlated to pro-citizen decisions. The less costly the standing rule, the higher the probability a citizen has of winning a case at an administrative court. Finally, enforcement capacities correlate significantly and positively with pro-citizens decisions. The greater the enforcement capacities of a court, the higher the probability a citizen has of winning a case in it.

Regarding control variables, the type of plaintiff was significant and negatively correlated with pro-citizens' decisions. Companies have a lower likelihood of winning cases than individuals. This is counterintuitive, since companies would normally have more resources to invest in their complaints and may be repeat players. However, it may be that when companies are plaintiffs the stakes of the case are higher and judges prefer not to impose costs on the government. The age of the court was also significantly correlated to pro-citizen decisions. The older the court, the higher citizens' probabilities of winning a case will be. Finally, regarding HDI, judges in states that have greater general wellbeing tend to have higher percentages of judgments in favor of the citizens.

Notably, the ratio of pro-government to pro-citizens decisions cannot entirely act as a a proxy of judicial independence. Pro-government decisions may reflect an environment in which agencies rarely violate citizens' rights, rather than failure to allow judges independence. However, the findings reveal that the design of rules regarding judges' independence, institutional capacities, and procedural rules influence judges' decisions in an important manner, which suggests that measures designed to create judicial independence actually do.

IV. Summary

Institutional design as well as procedural and substantive norms ruling administrative courts have changed over time and across countries. Mexico is no exception and its system contains a number of different institutional designs. I dedicated the previous chapters to analyzing legislatures' decisions to create and design administrative courts in Mexico by means of several variables capturing the difference in design in the existing administrative courts in Mexico. To give continuity to my analysis, I dedicated this chapter to analyzing such rules not as outcomes but as drivers of administrative courts' decisions. Therefore, the purpose of this chapter was to determine if design features of administrative courts such as the branch to which the court pertains, judicial appointment procedures, judges' term length, institutional capacities, or procedural rules influenced administrative courts' decisions in any manner. The result was that most of the characteristics were significant to the way administrative courts solved cases.

Since all of these characteristics affect the outcome of the courts, it is crucial to propose an adequate design of each of these design features. Following the analyses made in previous chapters, I argue that design characteristics should provide administrative courts' judges with the highest degree of independence, the strongest institutional capacities, and the most equitable procedural rules.

Regarding independence, legislatures must guarantee that administrative courts are autonomous in their budget processes (not dependent on the executive branch). Usually this characteristic is related to the branch to which the court belongs because administrative courts pertaining to the judicial branch always submit their budgets through such judicial branch, while administrative courts pertaining to the executive branch do not always enjoy such autonomy.

Regarding judges' appointments, it is important to limit to the maximum extent possible the participation of the executive branch in the process. Since the executive branch is always the defendant in trials before administrative courts, it has a strong incentive to influence judges, especially through appointments. Consequently, removal of judges should also be an important feature of administrative court design, although Mexico has no variance in this regard and therefore provides no particular information about the effect of different proceedings. Nonetheless, removal proceedings must be pre-established, should limit intervention by the executive branch, and should, at a minimum, require legislative super majorities. Moreover, causes of removal should also be limited and should not include subjective motives. Term length of judges is also an important variable. As the analysis suggested, judges enjoying tenure (lifetime appointments) decide differently from judges without it. Therefore, judges should enjoy tenure or their term lengths should at least be greater than their appointers. Finally, judges' salaries must be protected.

Regarding institutional capacities and procedural rules, administrative courts must enjoy sufficient powers to hear a wide range of cases and enforce their decisions. For administrative courts to perform in an effective manner, procedural rules must comply with minimum standards. Therefore, initial suing costs should not be too high as to deter lawsuits; no procedural rules should clearly favor either party; the prevailing party should be compensated for the damages generated by the illegal act of the other party.

Conclusions

The main purpose of public institutions and legal systems within a democratic state is to guarantee citizens full enjoyment of every one of the rights that the constitutional and legal framework provides. Therefore, if the government hinders or directly denies the possibility of exercising or accessing such rights, it contradicts the rationale of the system that created it. However, the complexity of the multiple relationships that exist at different levels between the work of public authorities and the goals and aspirations of citizens make citizens vulnerable to injustice whether agents act in error, negligence, inability, corruption, arbitrariness, or bad faith.

Administrative law, and particularly administrative justice, constitute the mechanisms of response to these undesirable situations, and serve as instances of security for the citizens against the authorities. They also act as instances of strengthening the democratic system against the danger of wear. Therefore, administrative justice is inevitably related to the rule of law in democratic governments and implies the existence of legal remedies against decisions of administrative authorities. In different historical periods and in different cultural and social contexts, legal systems have resulted in administrative justice mechanisms that meet such needs, aspiring to protect their constituencies effectively.

Today administrative courts perform very important functions that not only affect citizens' redress in the case of disputes but also government performance. Moreover, redress encompasses even cases regarding human rights' violations. For example, in the specific case of granting reparations to victims of human rights' violations, administrative courts have accomplished important things. Through state liability, administrative courts in Argentina, Chile, Colombia, and Mexico have granted reparations to victims of human rights violations such as

illegal detentions or wrongful convictions. This role positions administrative courts at the core structure of accountability mechanisms through which citizens can exercise their rights. However, depending on how such mechanisms were created and designed, administrative justice can achieve its goals or not. Therefore, the design and performance of administrative courts merits special attention.

This dissertation has used several empirical methods to analyze the origin, evolution, and efficiency of administrative courts as monitoring devices of administrative action. To perform the analysis I used one of the most successful models to explain legislators' incentives to create or strengthen courts: the "insurance model," which posits that courts are created and strengthened when legislators from a specific political party suffer or foresee a decrease in their strength. To complement my analysis, and taking into account the specific functions of administrative courts, I also used the dominion model, which incorporates political factors regarding the executive branch. My main finding suggests that at their beginning, administrative courts were created with specific political party purposes. That is, governors had an important role in driving their creation, as evidenced by the fact that states where an elected governor pertained to a different political party from the previous one were more prone to create administrative courts.

The finding of political motives in the creation of administrative courts suggests that political motives might influence the design of administrative courts, as well. However, my findings regarding design were not as forceful as my findings regarding courts' creation. However, the analysis permitted me to delve into the minimum necessary features for an administrative court to function properly and accomplish its goals. Therefore, through Chapters II, III and IV I analyzed independence, institutional capacities, specialization, and procedural

rules of administrative courts. My findings suggest that there are several problems in the design of many administrative courts.

This is true even though I found no evidence that political factors predict administrative courts' design. Once created, administrative courts affect several different interests, which make different actors willing to participate in the designing process. It also protects administrative courts from dissolution when the political factors that led to their creation change. It is important for citizens to take advantage of the opportunity to influence the design of administrative courts, which these findings suggest they could have; however important politics may have been in the creation of administrative courts, their function is to protect citizens against illegal actions of the government.

My findings suggest that administrative courts in Mexico are not protecting citizens in an efficient and effective manner. While I cannot posit a unique ideal design, my analysis suggests that many of Mexico's administrative courts do not achieve even minimum standards. My findings suggest that administrative courts should guarantee, at least, independent appointments and removals of judges, minimum tenures for judges, and protection of salaries and budgets. At the institutional level administrative courts should guarantee access to administrative justice for citizens and sufficient capacities not only to enforce their decisions but also to compensate individuals harmed by the government. Finally, administrative courts' procedures must be equitable for parties. Rules should not benefit the government against the citizen.

My last chapter analyzes the effects of rules and other design features in the decisions administrative courts render. I found that most of the design features I examined affect how judges decide cases. In this regard, a recent survey of the specific problems of administrative justice in Mexico, the *Centro de Investigacion y Docencia Economicas* (CIDE), supports my

findings. This large citizen survey regarding administrative justice for citizens released in February 2015 found that citizens had several complaints regarding administrative justice in Mexico (*Centro de Investigacion y Docencia Economicas* 2015). Among the most recurrent complaints were the lack of independence and impartiality of judges, lack of access to administrative justice, lack of compensation to citizens harmed by the government, and delay in the solution of conflicts.

This dissertation has made a unique contribution to advancing the theoretical framework to design administrative courts in a number of respects. Among its most significant findings is the fact that the design of administrative courts affects both the final decisions of administrative courts in Mexico and citizens' perception regarding administrative justice. As such, it supports future research into the design and creation of administrative courts.

Appendices

Annex I. List of revised constitutions and statutes

The following list describes the names, publication dates and amendment dates of the state constitutions and statutes that were analyzed to create the database used through this dissertation.

Constitution of Aguascalientes	1950
Constitution of Aguascalientes	Amendment 19-09-1999
Constitution of Aguascalientes	Amendment 29-10-2001
Constitution of Aguascalientes	Amendment 25-06-2012
Ley Orgánica del Tribunal de lo Contencioso Administrativo del Estado de Aguascalientes	9/19/99
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	12/26/05
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	6/19/06
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	9/11/06
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	7/9/07
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	4/6/09
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	7/13/09
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	9/21/09
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	5/10/10
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	6/17/11
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	8/27/12
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	2/11/13
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	3/25/13
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	5/20/13
Ley Orgánica del Poder Judicial del Estado de Aguascalientes	6/24/13
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	9/19/99
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	4/10/06
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	4/6/09
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	9/7/09

Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	5/10/10
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	11/15/10
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	10/17/11
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	8/27/12
Ley de Procedimiento Contencioso Administrativo para el Estado de Aguascalientes	2/11/13
Constitution of Baja California	1953
Constitution of Baja California	Amendment 30-09-1989
Constitution of Baja California	Amendment 02-02-2007
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	1/31/89
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	12/20/89
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	12/17/99
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	8/19/05
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	8/10/07
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	1/30/09
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	2/13/09
Ley del Tribunal de lo Contencioso Administrativo del Estado de Baja California	2/20/09
Constitution of Baja California Sur	1975
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	4/20/96
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	7/31/97
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	6/19/98
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	4/6/99
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	8/10/04
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	11/30/04
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	7/11/06
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	10/5/06

Ley Orgánica del Poder Judicial del Estado de Baja California Sur	12/31/06
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	12/24/08
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	7/31/09
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	12/20/10
Ley Orgánica del Poder Judicial del Estado de Baja California Sur	3/20/11
Codigo Fiscal para el Estado y Municipios de Baja California Sur	31/12/2004
Codigo Fiscal para el Estado y Municipios de Baja California Sur	20/12/1997
Ley de Justicia Administrativa para el Estado de Baja California Sur	3/20/05
Ley de Justicia Administrativa para el Estado de Baja California Sur	12/24/08
Constitution of Campeche	2012
Ley Orgánica del Poder Judicial del Estado de Campeche	12/4/80
Ley Orgánica del Poder Judicial del Estado de Campeche	12/23/80
Ley Orgánica del Poder Judicial del Estado de Campeche	5/22/85
Ley Orgánica del Poder Judicial del Estado de Campeche	12/2/85
Ley Orgánica del Poder Judicial del Estado de Campeche	10/4/86
Ley Orgánica del Poder Judicial del Estado de Campeche	12/19/87
Ley Orgánica del Poder Judicial del Estado de Campeche	7/10/96
Ley Orgánica del Poder Judicial del Estado de Campeche	1/4/97
Ley Orgánica del Poder Judicial del Estado de Campeche	1/15/97
Ley Orgánica del Poder Judicial del Estado de Campeche	6/4/99
Ley Orgánica del Poder Judicial del Estado de Campeche	12/28/07
Ley Orgánica del Poder Judicial del Estado de Campeche	5/17/10
Ley Orgánica del Poder Judicial del Estado de Campeche	7/23/10
Ley Orgánica del Poder Judicial del Estado de Campeche	6/15/11
Código de Procedimientos Contencioso Administrativos del Estado de Campeche	1/4/97
Código de Procedimientos Contencioso Administrativos del Estado de Campeche	6/4/97
Código de Procedimientos Contencioso Administrativos del Estado de Campeche	12/10/97
Código de Procedimientos Contencioso Administrativos del Estado de Campeche	8/4/11

Constitution of Chihuahua	
Constitution of Chiapas	2011
Ley Orgánica del Poder Judicial del Estado de Chiapas	11/27/02
Ley Orgánica del Poder Judicial del Estado de Chiapas	11/5/04
Ley Orgánica del Poder Judicial del Estado de Chiapas	3/17/05
Ley Orgánica del Poder Judicial del Estado de Chiapas	3/14/07
Ley de Justicia Administrativa del Estado de Chiapas	1/18/89
Ley de Justicia Administrativa del Estado de Chiapas	12/22/93
Ley de Justicia Administrativa del Estado de Chiapas	11/9/04
Reglamento Interior del Tribunal de Justicia Electoral y Administrativa del Poder Judicial del Estado de Chiapas	10/24/07
Reglamento Interior del Tribunal de Justicia Electoral y Administrativa del Poder Judicial del Estado de Chiapas	3/18/09
Reglamento Interior del Tribunal de Justicia Electoral y Administrativa del Poder Judicial del Estado de Chiapas	7/8/09
Reglamento Interior del Tribunal de Justicia Electoral y Administrativa del Poder Judicial del Estado de Chiapas	8/24/11
Código de Organización del Poder Judicial del Estado de Chiapas	10/24/07
Código de Organización del Poder Judicial del Estado de Chiapas	3/18/09
Ley de Procedimientos Administrativos para el Estado de Chiapas	12/28/07
Ley de Procedimientos Administrativos para el Estado de Chiapas	5/28/08
Ley de Procedimientos Administrativos para el Estado de Chiapas	3/18/09
Ley de Procedimientos Administrativos para el Estado de Chiapas	5/26/10
Ley de Procedimientos Administrativos para el Estado de Chiapas	5/11/11
Constitution of Coahuila	
Constitution of Colima	2003
Ley de los Contencioso Administrativo del Estado de Colima	9/28/96
Ley de los Contencioso Administrativo del Estado de Colima	4/8/00

Ley de los Contencioso Administrativo del Estado de Colima	6/16/01
Ley de los Contencioso Administrativo del Estado de Colima	7/20/02
Ley de los Contencioso Administrativo del Estado de Colima	3/17/07
Ley de los Contencioso Administrativo del Estado de Colima	2/9/08
Federal Constitution 1971	06-07-1971
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	17/03/1971
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	12/19/95
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	12/14/99
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	8/17/00
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	1/29/04
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	7/18/07
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	2/24/09
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	9/10/09
Ley del Tribunal de lo Contencioso Administrativo del Distrito Federal	7/24/12
Constitution of Durango	1917
Constitution of Durango	09-03-2003
Constitution of Durango	28-11-2010
Código de Justicia Administrativa del Estado de Durango	3/11/04
Código de Justicia Administrativa del Estado de Durango	11/28/10
Código de Justicia Administrativa del Estado de Durango	12/23/10
Ley de Justicia Fiscal y Administrativa del Estado de Durango	12/23/10
Ley Orgánica del Poder Judicial del Estado de Durango	7/24/97
Ley Orgánica del Poder Judicial del Estado de Durango	6/13/02
Ley Orgánica del Poder Judicial del Estado de Durango	6/5/05

Ley Orgánica del Poder Judicial del Estado de Durango	10/5/06
Ley Orgánica del Poder Judicial del Estado de Durango	6/21/09
Ley Orgánica del Poder Judicial del Estado de Durango	7/2/09
Ley Orgánica del Poder Judicial del Estado de Durango	12/10/09
Ley Orgánica del Poder Judicial del Estado de Durango	4/1/10
Ley Orgánica del Poder Judicial del Estado de Durango	12/23/10
Ley Orgánica del Poder Judicial del Estado de Durango	6/14/12
Ley Orgánica del Poder Judicial del Estado de Durango	6/15/12
Ley Orgánica del Poder Judicial del Estado de Durango	8/28/12
Ley Orgánica del Poder Judicial del Estado de Durango	8/30/12
Ley Orgánica del Poder Judicial del Estado de Durango	9/3/12
Ley Orgánica del Poder Judicial del Estado de Durango	12/23/12
Ley Orgánica del Poder Judicial del Estado de Durango	3/14/13
Constitution of the State of Mexico	1930
Constitution of the State of Mexico	30-12-1970
Constitution of the State of Mexico	31-12-1986
Ley de Justicia Administrativa del Estado de México	31-12-1986
Código de Procedimientos Administrativos del Estado de México	2/7/97
Código de Procedimientos Administrativos del Estado de México	12/21/01
Código de Procedimientos Administrativos del Estado de México	11/25/04
Código de Procedimientos Administrativos del Estado de México	12/27/05
Código de Procedimientos Administrativos del Estado de México	12/27/06
Código de Procedimientos Administrativos del Estado de México	12/3/07
Código de Procedimientos Administrativos del Estado de México	8/19/10
Código de Procedimientos Administrativos del Estado de México	9/3/10
Código de Procedimientos Administrativos del Estado de México	11/9/10
Código de Procedimientos Administrativos del Estado de México	12/1/10

Código de Procedimientos Administrativos del Estado de México	3/31/11
Código de Procedimientos Administrativos del Estado de México	8/30/11
Código de Procedimientos Administrativos del Estado de México	8/24/12
Código de Procedimientos Administrativos del Estado de México	8/24/12
Código de Procedimientos Administrativos del Estado de México	10/15/12
Código de Procedimientos Administrativos del Estado de México	2/22/13
Código de Procedimientos Administrativos del Estado de México	2/28/13
Constitution of the State of Guanajuato	2011
Ley de Justicia Administrativa del Estado de Guanajuato	12/18/98
Ley de Justicia Administrativa del Estado de Guanajuato	7/28/00
Ley de Justicia Administrativa del Estado de Guanajuato	8/17/07
Ley de Justicia Administrativa del Estado de Guanajuato	11/30/07
Ley Orgánica del Tribunal de lo Contencioso Administrativo del Estado de Guanajuato	11/30/07
Código de Procedimiento y Justicia Administrativa para el Estado y los Municipios de Guanajuato	9/11/12
Constitution of the State of Guerrero	2011
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	7/7/87
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	9/25/87
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	2/26/91
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	10/11/91
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	12/12/97
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	4/20/99

Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	3/9/04
Ley de Justicia Administrativa y del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	3/9/04
Código de Procedimentos Contenciosos Administrativos del Estado de Guerrero	3/9/04
Código de Procedimentos Contenciosos Administrativos del Estado de Guerrero	6/16/09
Ley Orgánica del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	3/9/04
Ley Orgánica del Tribunal de lo Contencioso Administrativo del Estado de Guerrero	6/19/09
Constitution of the State of Hidalgo	10/1/20
Constitution of the State of Hidalgo	11/1/79
Constitution of the State of Hidalgo	1/16/87
Constitution of the State of Hidalgo	9/24/87
Constitution of the State of Hidalgo	5/9/98
Constitution of the State of Hidalgo	2007
Ley Orgánica del Tribunal Fiscal Administrativo del Estado de Hidalgo	12/31/81
Ley Orgánica del Tribunal Fiscal Administrativo del Estado de Hidalgo	12/30/83
Ley Orgánica del Tribunal Fiscal Administrativo del Estado de Hidalgo	8/6/01
Ley Orgánica del Poder Judicial del Estado de Hidalgo	8/6/01
Ley Orgánica del Poder Judicial del Estado de Hidalgo	11/5/01
Ley Orgánica del Poder Judicial del Estado de Hidalgo	7/24/06
Ley Orgánica del Poder Judicial del Estado de Hidalgo	9/25/06
Ley Orgánica del Poder Judicial del Estado de Hidalgo	4/2/07
Ley Orgánica del Poder Judicial del Estado de Hidalgo	5/11/07
Ley Orgánica del Poder Judicial del Estado de Hidalgo	1/7/08
Ley Orgánica del Poder Judicial de Hidalgo	1/7/08
Ley Orgánica del Poder Judicial de Hidalgo	11/16/09
Ley Orgánica del Poder Judicial de Hidalgo	8/9/10
Ley Orgánica del Poder Judicial de Hidalgo	2/14/11

Ley Orgánica del Poder Judicial de Hidalgo	2/21/11
Constitution of the State of Jalisco	1994
Ley de Justicia Administrativa del Estado de Jalisco	1/18/00
Ley de Justicia Administrativa del Estado de Jalisco	4/18/00
Ley de Justicia Administrativa del Estado de Jalisco	12/9/00
Ley de Justicia Administrativa del Estado de Jalisco	12/16/00
Ley de Justicia Administrativa del Estado de Jalisco	10/4/05
Ley de Justicia Administrativa del Estado de Jalisco	12/2/06
Ley de Justicia Administrativa del Estado de Jalisco	2/24/07
Ley de Justicia Administrativa del Estado de Jalisco	6/18/11
Ley de Justicia Administrativa del Estado de Jalisco	12/22/11
Ley de Justicia Administrativa del Estado de Jalisco	12/3/13
Ley Orgánica del Poder Judicial del Estado de Jalisco	7/1/97
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/10/98
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/18/00
Ley Orgánica del Poder Judicial del Estado de Jalisco	9/19/00
Ley Orgánica del Poder Judicial del Estado de Jalisco	7/17/01
Ley Orgánica del Poder Judicial del Estado de Jalisco	6/22/02
Ley Orgánica del Poder Judicial del Estado de Jalisco	12/5/02
Ley Orgánica del Poder Judicial del Estado de Jalisco	5/1/03
Ley Orgánica del Poder Judicial del Estado de Jalisco	8/7/03
Ley Orgánica del Poder Judicial del Estado de Jalisco	9/11/03
Ley Orgánica del Poder Judicial del Estado de Jalisco	11/13/03
Ley Orgánica del Poder Judicial del Estado de Jalisco	7/24/04
Ley Orgánica del Poder Judicial del Estado de Jalisco	8/26/04
Ley Orgánica del Poder Judicial del Estado de Jalisco	9/18/04
Ley Orgánica del Poder Judicial del Estado de Jalisco	12/16/04
Ley Orgánica del Poder Judicial del Estado de Jalisco	12/13/05
Ley Orgánica del Poder Judicial del Estado de Jalisco	6/22/06
Ley Orgánica del Poder Judicial del Estado de Jalisco	6/22/06
Ley Orgánica del Poder Judicial del Estado de Jalisco	9/14/06
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/4/07

Ley Orgánica del Poder Judicial del Estado de Jalisco	1/11/07
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/19/07
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/20/07
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/30/07
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/22/08
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/24/08
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/26/08
Ley Orgánica del Poder Judicial del Estado de Jalisco	12/31/09
Ley Orgánica del Poder Judicial del Estado de Jalisco	12/23/10
Ley Orgánica del Poder Judicial del Estado de Jalisco	1/8/11
Ley Orgánica del Poder Judicial del Estado de Jalisco	3/31/12
Ley Orgánica del Poder Judicial del Estado de Jalisco	5/10/12
Ley Orgánica del Poder Judicial del Estado de Jalisco	6/5/12
Ley Orgánica del Poder Judicial del Estado de Jalisco	6/9/12
Ley Orgánica del Poder Judicial del Estado de Jalisco	9/20/12
Constitution of the State of Michoacan	2007
Código de Justicia Administrativa del Estado de Michoacán de Ocampo	8/23/07
Código de Justicia Administrativa del Estado de Michoacán de Ocampo	11/30/07
Código de Justicia Administrativa del Estado de Michoacán de Ocampo	10/19/11
Código de Justicia Administrativa del Estado de Michoacán de Ocampo	12/14/12
Constitution of the State of Morelos	2011
Ley de Justicia Administrativa del Estado de Morelos	2/14/90
Ley de Justicia Administrativa del Estado de Morelos	3/7/90
Ley de Justicia Administrativa del Estado de Morelos	7/17/96
Ley de Justicia Administrativa del Estado de Morelos	9/13/00
Ley de Justicia Administrativa del Estado de Morelos	1/23/13
Reglamento Interior del Tribunal de lo Contencioso Administrativo del Poder Judicial del Estado de Morelos	6/13/01
Reglamento Interior del Tribunal de lo Contencioso Administrativo del Poder Judicial del Estado de Morelos	2/13/08

Reglamento Interior del Tribunal de lo Contencioso Administrativo del Poder Judicial del Estado de Morelos	7/11/12
Constitution of the State of Nayarit	2006
Ley de Justicia y Procedimientos Administrativos del Estado de Nayarit	8/17/02
Ley de Justicia y Procedimientos Administrativos del Estado de Nayarit	9/28/02
Ley de Justicia y Procedimientos Administrativos del Estado de Nayarit	4/18/09
Ley de Justicia y Procedimientos Administrativos del Estado de Nayarit	1/22/11
Ley de Justicia y Procedimientos Administrativos del Estado de Nayarit	3/3/12
Constitution of the State of Nuevo Leon	2012
Ley Orgánica del Tribunal de lo Contencioso Administrativo y el Código Procesal del Tribunal de lo Contencioso Administrativo publicados en el Periódico Oficial del Estado	7/5/91
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	2/21/97
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	9/10/03
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	7/14/04
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	12/27/05
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	2/11/07
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	31/12/08
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	2/20/09
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	3/20/09
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	6/17/11
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	2/1/12
Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	2/4/12

Ley de Justicia Administrativa para el Estado y Municipios de Nuevo León	4/12/13
Constitution of the State of Oaxaca	2012
Ley de Justicia Administrativa para el Estado de Oaxaca	12/31/05
Ley de Justicia Administrativa para el Estado de Oaxaca	2/18/06
Ley de Justicia Administrativa para el Estado de Oaxaca	6/3/06
Ley de Justicia Administrativa para el Estado de Oaxaca	10/12/09
Ley de Justicia Administrativa para el Estado de Oaxaca	12/24/11
Ley de Justicia Administrativa para el Estado de Oaxaca	7/4/12
Ley de Justicia Administrativa para el Estado de Oaxaca	7/18/12
Ley Organica del poder Judicial del Estado de Oaxaca	4/28/12
Constitution of the State of Queretaro	1991
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	12/26/85
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	10/27/88
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	8/8/91
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	9/29/03
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	9/29/03
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	11/17/06
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Querétaro	10/19/07
Ley de Enjuiciamiento de lo Contencioso Administrativo del Estado de Querétaro	6/17/09
Ley de Enjuiciamiento de lo Contencioso Administrativo del Estado de Querétaro	11/25/11
Ley de Enjuiciamiento de lo Contencioso Administrativo del Estado de Querétaro	9/29/03
Ley de Enjuiciamiento de lo Contencioso Administrativo del Estado de Querétaro	11/7/03
Ley de Enjuiciamiento de lo Contencioso Administrativo del Estado de Querétaro	6/17/09
Constitution of the State of Quintana Roo	2008
Ley de Justicia Administrativa del Estado de Quintana Roo	8/24/04

Ley Organica del Poder Judicial del Estado de Quintana Roo	2/15/99
Ley Organica del Poder Judicial del Estado de Quintana Roo	9/8/00
Ley Organica del Poder Judicial del Estado de Quintana Roo	6/29/01
Ley Organica del Poder Judicial del Estado de Quintana Roo	2/15/02
Ley Organica del Poder Judicial del Estado de Quintana Roo	12/16/03
Ley Organica del Poder Judicial del Estado de Quintana Roo	11/27/07
Ley Organica del Poder Judicial del Estado de Quintana Roo	3/11/08
Ley Organica del Poder Judicial del Estado de Quintana Roo	9/18/09
Ley Organica del Poder Judicial del Estado de Quintana Roo	2/10/11
Ley Organica del Poder Judicial del Estado de Quintana Roo	2/25/11
Ley Organica del Poder Judicial del Estado de Quintana Roo	12/19/11
Ley Organica del Poder Judicial del Estado de Quintana Roo	15/03/12
Ley Organica del Poder Judicial del Estado de Quintana Roo	11/30/12
Ley Organica del Poder Judicial del Estado de Quintana Roo	4/15/13
Ley Organica del Poder Judicial del Estado de Quintana Roo	15/05/13
Constitution of the State of San Luis Potosi	2006
Ley de Justicia Administrativa del Estado de San Luis Potosi	4/30/97
Ley de Justicia Administrativa del Estado de San Luis Potosi	10/1/01
Ley de Justicia Administrativa del Estado de San Luis Potosi	9/27/07
Ley de Justicia Administrativa del Estado de San Luis Potosi	7/7/09
Ley de Justicia Administrativa del Estado de San Luis Potosi	2/16/12
Ley de Justicia Administrativa del Estado de San Luis Potosi	10/12/13
Constitution of the State of Sinaloa	2012
Ley de Justicia Administrativa para el Estado de Sinaloa	3/26/93
Ley de Justicia Administrativa para el Estado de Sinaloa	12/26/94
Ley de Justicia Administrativa para el Estado de Sinaloa	2/27/95
Ley de Justicia Administrativa para el Estado de Sinaloa	4/8/98
Ley de Justicia Administrativa para el Estado de Sinaloa	4/16/01
Ley de Justicia Administrativa para el Estado de Sinaloa	9/14/11
Constitution of the State of Sonora	2006
Ley Orgánica del Tribunal de lo Contencioso-Administrativo del Estado de Sonora	1/26/77
Código Fiscal Sonora	6/12/00

Código Fiscal Sonora	6/19/00
Código Fiscal Sonora	12/18/03
Código Fiscal Sonora	12/29/05
Código Fiscal Sonora	12/29/06
Código Fiscal Sonora	2/12/07
Código Fiscal Sonora	8/14/07
Código Fiscal Sonora	12/17/07
Código Fiscal Sonora	12/26/08
Código Fiscal Sonora	12/29/09
Código Fiscal Sonora	12/30/10
Código Fiscal Sonora	8/6/12
Código Fiscal Sonora	12/31/12
Código Fiscal Sonora	12/19/13
Constitution of the State of Tabasco	2010
Ley de Justicia Administrativa para el Estado de Tabasco	2/19/97
Ley de Justicia Administrativa para el Estado de Tabasco	2/27/97
Código Fiscal del Estado de Tamaulipas	12/29/76
Código Fiscal del Estado de Tamaulipas	12/9/78
Código Fiscal del Estado de Tamaulipas	12/16/81
Código Fiscal del Estado de Tamaulipas	12/30/81
Código Fiscal del Estado de Tamaulipas	1/1/83
Código Fiscal del Estado de Tamaulipas	2/5/83
Código Fiscal del Estado de Tamaulipas	12/31/83
Código Fiscal del Estado de Tamaulipas	12/28/91
Código Fiscal del Estado de Tamaulipas	12/15/04
Código Fiscal del Estado de Tamaulipas	6/5/08
Código Fiscal del Estado de Tamaulipas	10/26/10
Código Fiscal del Estado de Tamaulipas	12/20/11
Código Fiscal del Estado de Tamaulipas	4/19/12
Código Fiscal del Estado de Tamaulipas	7/4/12
Código Fiscal del Estado de Tamaulipas	12/19/12
Código Fiscal del Estado de Tamaulipas	1/17/13
Constitution of the State of Tlaxcala	2011
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	1/10/02
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	1/12/02

Ley Orgánica del Poder Judicial del Estado de Tlaxcala	2/11/02
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	12/19/02
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	9/1/03
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	2/9/05
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	9/25/06
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	4/13/07
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	1/17/08
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	12/8/08
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	1/28/09
Ley Orgánica del Poder Judicial del Estado de Tlaxcala	6/2/11
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/31/03
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	5/26/03
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/24/03
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	10/6/04
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/30/05
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	5/25/06
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/30/06
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/23/08
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	2/19/09
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/7/09
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	9/7/10
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/29/10
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	2/22/11
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	3/16/11
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	4/13/11
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	10/21/11
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/23/11
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	12/26/12
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	7/5/13
Codigo Financiero para el Estado de Tlaxcala y sus Municipios	9/27/13
Constitution of the State of Veracruz	2000
Ley Organica del Tribunal Fiscal del Estado	1975

Ley de Justicia Administrativa	1989
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	1/29/01
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	1/6/03
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	3/18/03
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	4/22/03
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	2/2/04
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	8/10/04
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	8/5/05
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	8/29/07
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	11/5/10
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	2/2/11
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	12/21/12
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	8/13/13
Código de Procedimientos Administrativos para el Estado de Veracruz de Ignacio Llave	12/16/13
Ley Organica del Poder Judicial Veracruz	7/26/00
Ley Organica del Poder Judicial Veracruz	8/17/00
Ley Organica del Poder Judicial Veracruz	1/19/01
Ley Organica del Poder Judicial Veracruz	12/30/02
Ley Organica del Poder Judicial Veracruz	3/18/03
Ley Organica del Poder Judicial Veracruz	12/31/03
Ley Organica del Poder Judicial Veracruz	8/27/04
Ley Organica del Poder Judicial Veracruz	11/1/04
Ley Organica del Poder Judicial Veracruz	12/31/04
Ley Organica del Poder Judicial Veracruz	7/2/07
Ley Organica del Poder Judicial Veracruz	8/15/07
Ley Organica del Poder Judicial Veracruz	6/11/08
Ley Organica del Poder Judicial Veracruz	7/8/08
Ley Organica del Poder Judicial Veracruz	7/10/08
Ley Organica del Poder Judicial Veracruz	12/25/08
Ley Organica del Poder Judicial Veracruz	4/7/09

Ley Organica del Poder Judicial Veracruz	7/17/09
Ley Organica del Poder Judicial Veracruz	10/30/09
Ley Organica del Poder Judicial Veracruz	8/17/10
Ley Organica del Poder Judicial Veracruz	10/29/10
Ley Organica del Poder Judicial Veracruz	8/29/11
Ley Organica del Poder Judicial Veracruz	1/24/13
Constitution of the State of Yucatan	1938
Ley Organica del Tribunal de lo Contencioso Administrativo del Estado de Yucatan	10/1/87
Ley Organica del Tribunal de lo Contencioso Administrativo del Estado de Yucatan	12/13/90
Ley de lo Contencioso Administrativo del Estado de Yucatán	1/10/87
Ley de lo Contencioso Administrativo del Estado de Yucatán	10/9/87
Ley de lo Contencioso Administrativo del Estado de Yucatán	6/28/14
Ley Organica del Poder Judicial del Estado de Yucatan	11/24/10
Ley Organica del Poder Judicial del Estado de Yucatan	9/11/12
Constitution of the State of Zacatecas	2011
Ley del Tribunal de lo Contencioso Administrativo del Estado y Municipios de Zacatecas	4/1/00
Ley del Tribunal de lo Contencioso Administrativo del Estado y Municipios de Zacatecas	1/11/03
Ley del Tribunal de lo Contencioso Administrativo del Estado y Municipios de Zacatecas	5/24/03
Ley del Tribunal de lo Contencioso Administrativo del Estado y Municipios de Zacatecas	12/27/03

Annex II. Chapter V empirical analysis using Probit regressions

Table 22 describes the results of the empirical analysis performed in Chapter V using a probit regression.

Table 22. Influence of design variables over administrative courts' decisions (Probit)

Dependent variable:	Pro-citizens decisions	
	Coefficient	*p*-value (95% C.I)
Judicial branch	.5554702 (.071452)	0.000*
Non-executive nomination	-.6836168 (.056788)	0.000*
Non-tenure judge	-.5304495 (.0653732)	0.000*
Protection of salaries	.5289861 (.0495967)	0.000 *
Pro-citizen rules of standing	.3664469 (.0517362)	0.000 *
Monetary liability powers	.1910938 (.0764437)	0.012*
Replacement of complaints powers	-.0352749 (.0626847)	0.574
Enforcement capacities	.4943269 (.0533509)	0.000*
Type of plaintiff	-.3112933 (.0514627)	0.000*
Year creation court	-.0176252 (.0028063)	0.000*
HDI	4.603786 (.716257)	0.000*
Prob>Chi2	0.0000	
N	5020	

Note: Results for year dummies for all regressions are not reported, but are available from the author. Coefficients with an asterisk are significant at $p < 0.05$.

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