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Abstract

Recent theory in judicial politics suggests that a normative public commitment to a state's high court can undermine political constraints on judging induced by the separation-of-powers system. If public support affects judicial authority in this way, judges ought to care about influencing the information to which citizens have access, especially when they substitute their preferences for those of elected officials by invalidating public policies. This study attempts to simultaneously explain the Mexican Supreme Court's merits decisions in constitutional cases and its choices to issue press releases summarizing those decisions for members of the national media. Using original data on the Supreme Court's constitutional resolutions, I find that the Court was significantly more likely to publicize decisions striking down public policies than those upholding them. I also find that that the Court was most likely to publicize resolutions striking down important federal policies, the policies the Court was least likely to invalidate.

Introduction

In 1819, John Marshall published a series of essays in the Alexandria Gazette and the Philadelphia Union vigorously defending the United States Supreme Court's McCulloch v. Maryland decision against an organized anti-federalist attack (Gunther 1969). While Marshall's defense of McCulloch may have been exceptionally passionate, he has not been the last high court judge to go public. Modern constitutional court members frequently speak and publish work on judging and the implications of particular kinds of decisions (Barak 2002: Breyer 2002). Nearly every constitutional court in the world maintains a website through which they distribute information on case results, and like Marshall, a number of these courts selectively promote their decisions, granting interviews or issuing press releases describing only some of their resolutions.[1] In this paper, I argue that the selective promotion of case results is tied to a natural desire among high court judges to effectively exercise their authority. Moreover, this behavior is consistent with a model of inter-branch relations, most recently articulated by Vanberg (2001), which recognizes the potential political constraints on judging induced by the separation-of-powers yet grants significant weight to the concept of judicial legitimacy or diffuse public support. If public support is critical to the proper exercise of judicial power, we surely might expect judges to care about the kind of information to which people are exposed. This interest ought to be especially compelling when they invalidate public policies, substituting their own preferences for those of elected state representatives.

This paper identifies a theoretical link between the jurisprudential choices judges make and their decisions to publicize those choices. By highlighting the judicial concern for public information, I hope to underscore the value of a theoretical model of judicial choice that integrates positive and normative approaches to judicial politics. In short, there is nothing necessarily inconsistent about a positive political model of judging that invokes the concept of public support, especially if judges actually believe in the force of public support and think strategically. I test implications of the theoretical argument using an original data set on all

constitutional decisions of the Mexican Supreme Court between 1995 and 2002. Given the proposed relationship between judicial decision-making and case promotion I seek to simultaneously explain the Court's merits decisions in constitutional cases and its choices to publicize the results of those decisions by issuing detailed press releases to print and television media.

In what follows, I briefly review the intellectual roots of Vanberg's model and describe how it nicely integrates two divergent theoretical traditions. I then clarify how such a model can explain both decisions to strike down public policies and choices to publicize case results. In the subsequent section, I discuss why Mexico at the turn of the 21st Century offers an excellent opportunity to test the argument. I then summarize the data, review my estimation strategy and present the results.

Judicial Review and Democracy

Scholars consider effective judicial review to be a crucial part of any successful democratic regime. By ensuring that state representatives are themselves bound to the fundamental rules of society, courts empowered to review governmental actions are believed to promote legislative compromise and facilitate the creation of credible commitments (Landes and Posner 1975, North and Weingast 1989). They also are purported to increase regime stability, drive long-term economic growth and enhance public trust in democratic institutions (Prillaman 2001: 1-5). Still, in order to provide these benefits judges must be willing and capable of effectively exercising their authority. If judges are overly deferential to politicians or if judicial resolutions may be ignored and judges attacked for attempting to hold elected officials accountable, it is not clear that judges can play the key role assigned to them in most institutional analyses.

This issue is especially relevant in democratizing countries where controlling the excesses of the state is a significant a cause of concern, and where constitutional review has been

championed as a key institutional solution to failures in electoral accountability (O'Donnell 1999). Unfortunately, merely creating constitutional courts does not always solve accountability problems – real politics sometimes get in the way. In 1999, Venezuelan Supreme Court President Cecilia Sosa Gomez resigned in protest over her court's refusal to block Hugo Chavez's removal of a set of federal judges. Sosa claimed that by failing to challenge Chavez over a policy her fellow magistrates sincerely believed to be unconstitutional, the Court had "committed suicide in order to avoid being assassinated."[2] To the dismay of many international observers, this kind of experience has not been confined to Venezuela. Indeed, a number of constitutional courts in Eastern Europe, Africa and Latin America have been subjected to both subtle forms of political intimidation and direct attacks on their key institutions in response to resolutions challenging state authority (Hammergren 1998; Schwartz 1998; Widner 2001). In light of these outcomes it is not surprising that some constitutional courts have been reluctant to hold powerful elected officials accountable for their behavior.

Comparative researchers have increasingly turned to strategic models of decision-making in order to explain judicial behavior suggested by Sosa's explanation (Helmke 2002**;** Iaryczower, Spiller and Tommasi 2002; Vanberg 2001). They have done so because purely doctrinal or ideological theories of judicial choice cannot make sense of behavior that looks less than sincere. Neither approach can account for a judge's decision that cuts directly against her preferences, whether they be induced by existing legal doctrine or by political ideology, as is largely believed by political scientists.[3] Although strategic models typically adopt the attitudinal assumption that judicial decisions are primarily driven by policy preferences, they also recognize that inter-branch politics may influence judicial choice (Epstein and Knight 1998, 22-51)**.** Legislatures and executives ordinarily enjoy a degree of control over key judicial institutions including jurisdiction, budgets, and tenure. Implicit or explicit threats to change these institutions in response to unfavorable opinions may grant politicians influence over the judiciary, especially where these institutions are relatively unstable (Ferejohn 1999; Ramseyer and Rasmusen 2001).

The most straightforward insight from this literature then is that high courts ought to be less likely to invalidate policies that are relatively important to the officials empowered to change judicial institutions, the kinds of cases that are more likely to generate interest in disciplining activist judges (Helmke 2002, 294).[4] Further, courts ought to be especially unlikely to invalidate policies under the condition of unified government, the political environment in which politicians will find it easiest to coordinate on an appropriate response (Iaryczower, Spiller and Tommasi 2002, 699; Spiller and Gely 1992, 471-472).

While strategic models offer a measure of theoretical precision and may capture some of the political pressure judges face when considering sensitive controversies, such models cannot explain why courts sometimes issue decisions that fly in the face of political officials capable of disciplining them. Advocates of judicial legitimacy theory propose that precisely because the coercive sources of judicial power are minimal, courts heavily rely on societal beliefs in their legitimacy in order to induce acceptance of their most disliked decisions (Caldeira 1986, 1209). Judicial legitimacy is typically conceptualized through Easton's (1965) notion of diffuse public support, which has been described as a "reservoir of good will" and measured as the degree to which people trust their judges and are committed to the institutional structure of their courts (Gibson and Caldeira 1992, 638). Although this approach is designed to explain societal level acceptance of judicial policies, Gibson, Caldeira and Spence (2003, 537) hint at how legitimacy theory might shed light on decision-making. They write, "Institutions without a reservoir of good will may be limited in their ability to go against the preferences of the majority, even when it is necessary or wise". Although not made explicit, the implication seems to be that larger reservoirs of good will ought to allow courts the freedom to more freely exercise their authority.

An Integrated Model of Judicial Review

Vanberg's work on judicial-legislative relations integrates key insights from the positive and normative approaches reviewed above (also see Friedman 2000). He proposes a model of judicial review in which courts and politicians interact under the sometimes-watchful eye of a

public that is more or less capable of punishing recalcitrant officials. Thus, Vanberg examines a clear implication of legitimacy theory: the possibility of negative public reactions to attempts at evading decisions or punishing courts may induce public officials to accept otherwise unacceptable decisions. If this is true, then even courts in political environments that typically induce strategic behavior may be freed to behave sincerely. Still, this mechanism is more likely to work as public support increases and as people are better able to monitor the interactions between courts and their representatives (347). If people do not care for their judges or if they are uninformed about the decisions courts make, they will be unlikely to constrain potentially mischievous politicians. Under these conditions, judges and politicians ought to behave as if the public does not exist.

It is here that the critical link between judicial decision-making and case promotion resides. A clear implication of Vanberg's model is that courts ought to be decreasingly likely to strike down public policies as the importance of those policies increases for powerful politicians (351); however, public awareness and the level of judicial legitimacy undercut this constraint on judicial power.[5] If this is true, we might expect judges to care about affecting both of these variables, especially when they invalidate public policies. Clearly, judges can influence public awareness by making it easier for the media to cover their resolutions. The creation of public information offices that issue summaries of decisions translating technical legal construction into accessible prose is surely part of this process. Of course, if Vanberg is correct, increasing public awareness is likely to matter most when courts strike down public policies. These are the cases in which courts are most likely to risk being attacked for undue judicial activism, and as such these are the cases where public awareness is most in need.

These are also the cases in which courts substitute their policy preferences for those of elected officials, and by extension, the public itself. In the sense that judicial legitimacy is in part a function of the congruence between citizen preferences and judicial outputs, these cases are more likely to test judicial legitimacy than those in which courts uphold policies generated by

political majorities (Dahl 1957; Gibson, Caldeira and Baird 1998, 351). As such, judges ought to be especially interested in properly communicating to the public the technical, apolitical bases for their resolutions when they invalidate public policies.[6] If results on issue framing are to be believed, effectively communicating their ratio decidendi can reinforce beliefs in judicial impartiality, an important component of legitimacy (Nelson and Kinder 1996; Segal and Hoekstra 1996). Summarizing results on framing effects in the United States, Gibson, Caldeira and Baird (1998, 345) write, "When ordinary people hear judges of the nation's highest court frame their decisions in this fashion, they often believe the justices' account of why they made the decision." While the results may not capture the effect of framing in all contexts, they are clearly suggestive.[7]

Before moving on, I note a final incentive to selectively promote resolutions striking down public policies, one that works most intensely on courts believed to be dependent on a particular political official. Consider a case in which a constitutional court, believed to be a mere extension of the executive branch, is asked to review the constitutionality of an executive decree banning the electoral participation of a particular political party. The invalidation of this decree offers the court an important opportunity to undermine beliefs in its political dependence. However, in order to do so, people will have to be informed about the decision. Accordingly, the incentive to promote decisions striking down public policies ought to be strongest when a court challenges the authority of an official on whom the court is believed to depend.

The previous discussion suggests three simple, testable propositions. First, the probability of striking down a public policy should be decreasing in the policy's importance for political officials that control judicial institutions.[8] This much follows directly from Vanberg's model. Second, following from my discussion above, the probability that a court attempts to publicize a case result should be greater when that court strikes down the policy under review than when it upholds it. Third, courts believed to be dependent on particular officials should be especially likely to promote resolutions striking down policies associated with those officials.

To summarize, Vanberg's model integrates two divergent approaches to judicial politics, one that offers a theoretically precise way of modeling strategic interaction and another that highlights the relevance of public support. The model suggests a number of empirical implications for judicial decision-making, one of which I test here. Additionally, if we believe that judges ought to be interested in affecting their own legitimacy, Vanberg's approach also suggests two implications concerning the selective promotion of case results – implications linked to the decision-making process itself. I examine these hypotheses in Mexico by asking the following questions. Has the Mexican Supreme Court conditioned its decisions in constitutional cases on the importance of the policies challenged for federal officials, the officials empowered to change federal judicial institutions? Has the Court been more likely to issue press releases announcing its resolutions striking down public policies than those upholding them? Has the Court been especially likely to promote resolutions striking down policies for which the President of the Republic is directly responsible?

The Mexican Case

A proper test of the theoretical argument requires that the unit of analysis be at the level of an individual constitutional decision, allowing policy importance to vary across observations. This makes a one-country design more attractive than a cross-national design, the latter being unusually labor intensive given the current state of data on constitutional decision-making around the world.[9] Mexico at the turn of the 21st Century presents an excellent case for a number of reasons. As Helmke (2002: 291) argues, strategic models are far more likely to explain judicial behavior in settings where institutions are relatively unstable. In 1994, the Mexican federal judiciary underwent a monumental reform, one that drastically affected the size, tenure and constitutional jurisdiction of the Supreme Court (Carranco Zúñiga 2000). Although the reform significantly expanded the Court's jurisdiction, tenure was changed from life to a non-renewable 15-year term, its membership was reduced from 26 to 11, all ministers were forced to resign, and

a new Court was appointed. This was not the first change of this sort during the 20th Century. In fact, the size of the Supreme Court changed four times between the adoption of the 1917 Constitution and the 1994 reform. Rules governing judicial tenure changed five times over that period. In all, the federal constitutional articles governing the judiciary have been amended over 69 times since 1928 (Carranco Zúñiga 2000, 97). Also, Mexican historians and political scientists point to at least three clear instances of institutional change during the 20th Century that were designed to reign in an activist Supreme Court (Baker 1971, 57; Domingo 2000, 713; Schwartz 1973, 313). Thus, it would appear at least facially valid to assume that the ministers of the Supreme Court who took the bench in early 1995 might have perceived a risk of further institutional tinkering.

Another advantage of the Mexican case during the period I analyze is that the composition of federal government changed dramatically. The Partido Revolucionario Institucional (PRI) held both the presidency and majorities of both chambers of Congress until September 1, 1997, when it lost its absolute congressional majority. Three years later, the PRI absorbed another political blow when Vicente Fox officially succeeded Ernesto Zedillo as president on December 1, 2000. This changing composition of federal government allows me to examine the Court's decision-making across periods of divided and unified government, periods in which the incentives for strategically avoiding political conflict should have been significantly different.

In contrast to the political branches of government, the Court's membership did not change between January 1995 and December 2003, when two members of the original eleven stepped down. This absolute stability in membership allows me to control for judicial ideology. Unless preferences are changing over the course of the period studied, the aggregate ideology of the court, whatever that may be, is controlled by design. Whether the ministers' preferences are induced by legal philosophy or political ideology, they cannot explain the variance I measure in the Supreme Court's decision-making.

Finally, the ministers who took the bench following the 1994 reform faced a non-ignorable public perception that the Supreme Court was largely irrelevant to politics, and possibly dependent on the President of the Republic (Fix-Fierro 1998; Domingo 2000; Magaloni 2003). Believing that changing these beliefs would help develop the Court's legitimacy, the ministers set about convincing the Mexican public that the Court was fully autonomous and clearly relevant the new political landscape (Silva Mesa 2000). The ministers gave countless speeches on the political role of the Supreme Court following the 1994 reform. They even produced research arguing that the Court's pattern of decisions in the 1990s did not support a belief that it was dependent on any federal political official (Sánchez Cordero 2000). Thus, while not unique to constitutional courts in democratizing states, the Mexican Supreme Court possessed strong incentives to provide the Mexican public with selective information about its resolutions in order to reinforce its arguments concerning its autonomy and political relevance. This is precisely the kind of court that might be expected to selectively promote its decisions.[10] Testing whether or not it did so is the subject of the next section.

Data

I make use of an original data set on the universe of constitutional cases resolved by the Supreme Court in plenary session between 1995 and 2002.[11] I restrict the analysis to resolutions on or after September 1, 1996, the date of the first press release to which I have access. The data set includes three kinds of constitutional actions: amparo appeals, constitutional controversies and actions of unconstitutionality. Past analysis of Mexican Supreme Court decision-making has focused either on amparo resolutions (Schwartz 1973), on constitutional controversies (Magaloni and Sánchez 2001), or on both constitutional controversies and actions of unconstitutionality (Rios-Figueroa 2003). This is the first study of which I am aware that makes use of the full range of cases heard by the Mexican Supreme Court.

Amparo is a form of individual constitutional complaint wherein persons, organizations, corporations may seek redress in federal court against alleged governmental violations of individual rights. The Supreme Court hears amparo suits on appeal from lower federal district and circuit courts. In contrast, the Supreme Court hears all constitutional controversies and actions of unconstitutionality in the first instance. In constitutional controversies, the Court resolves jurisdictional conflicts between levels of government and across branches of government within a level – that is, only federalism and separation-of-powers cases. In actions of unconstitutionality, the Court exercises abstract review over the constitutionality of state laws, federal laws and international treaties.[12] With one limited exception, the Supreme Court's jurisdiction in all three cases is mandatory.[13] Thus, these data capture all constitutional claims that met the Court's statutorily defined jurisdiction.[14]

Dependent Variables

The first dependent variable, *Strike*, indicates whether or not the Court invalidated a piece of the policy challenged through one of the three constitutional actions reviewed above. Strike is coded one 1 if the Court supported at least one argument developed by the party challenging the policy's constitutionality, and 0 otherwise. The second dependent variable, *Press*, is coded 1 if the Court issued a press release announcing the result, and 0 otherwise.

[Table 1 about here]

Table 1 shows the joint distribution of Press and Strike. I note three pieces of information. First, the Court invalidated roughly 73% of the policies it reviewed. Second, it issued a press release announcing about 10 % of its decisions. Third, confirming theoretical expectations, there appears to be a relationship between Strike and Press. The Court issued a press release announcing one out of every 20 cases in which it upheld a challenged policy. For those cases in which the Court struck down the policy, it announced roughly one out of every four – an increase of nearly 400%.

While the information in Table 2 confirms theoretical expectations, it is a simplistic test of the first hypothesis on case promotion and it cannot address the court's decision-making process. If Vanberg's model accurately captures how courts think about the political constraints on their authority, and judges believe that they can use public relations to affect the variables that induce more sincere behavior, then decisions to strike down public policies and choices to announce those decisions are likely to be jointly determined. Accordingly, an appropriate empirical strategy requires estimating the joint distribution of Strike and Press. Given the theoretical relationship between these variables, a systematic test of the hypotheses requires estimating the following recursive simultaneous equations model.

$$\text{Strike}^* = \alpha' x_1 - u_1$$
$$\text{Press}^* = \beta'(\text{Strike}) + \gamma' x_2 - u_2$$

Strike* and Press* are unobserved continuous response variables, for which we observe Strike =1 if Strike*>0 and Strike=0 otherwise – likewise for Press*. The x_i are vectors of right-hand side variables in each equation and the u_i are randomly distributed error terms. Before addressing the methodological challenges associated with estimating this model, I discuss the explanatory variables in each equation.

Explanatory Variables: Strike Equation

Federal Policy Importance

In order to develop a measure of the importance federal officials might assign to the policies on the Court's docket, appeal to the kind of constitutional claim under review and the level of the public official against which the claim was raised. Three assumptions underlie the measure. First, federal officials ought to care more about the policies challenged through constitutional controversies and actions of unconstitutionality than they do about those challenged via amparo. Second, they ought to care more about federal policies than state policies. Third, they ought to care more about state policies than municipal ones. Given these assumptions, I generate a measure of policy importance, *Import*, which is measured ordinally from 1 to 6. From least to

most important, the categories include a municipal regulation or executive action challenged via amparo; municipal regulation or executive action challenged via a constitutional controversy or action of unconstitutionality; state law or executive action challenged via amparo; state law or executive action challenged via a constitutional controversy or action of unconstitutionality; federal law or executive action challenged via amparo; federal law or executive action challenged via a constitutional controversy or action of unconstitutionality. I expect the estimated relationship between Import and Strike to be positive.

The second and third assumptions underlying this measure would appear relatively uncontroversial. On average, the President and the Federal Congress likely care more about the federal penal code than they do about the penal code of Nuevo León, and they likely care more about Nuevo León's penal code than a traffic regulation in Ciudad Juárez. Still, some challenges to federal law via amparo are likely to be salient, and in that sense, the first assumption deserves further justification. Resolutions to amparo suits settle only the immediate controversy being adjudicated.[15] When a corporation successfully challenges a provision of the federal fiscal code, that corporation is relieved of its fiscal obligation; however, other similarly aggrieved corporations are not immediately affected by the resolution. Corporations not involved in the suit would have to file identical amparo claims in order to receive the benefit of judicial protection. They cannot appeal for special consideration from bureaucratic agencies absent their own amparo writ. In contrast, decisions in both constitutional controversies and actions of unconstitutionality have the potential of setting general effects.[16] With respect to the measure, I argue that federal officials ought to care more about resolutions that have the potential of setting precedent than about those that do not.

Constitutional controversies and actions of unconstitutionality also deal with what we might understand as generically more significant political issues. Typical constitutional controversies involve state-municipal conflicts over the autonomy of local governments, state-state boundary disputes, and federal inter-branch conflicts over competing claims on power (Fix-

Fierro 1998). Actions of unconstitutionality frequently involve political party challenges to the constitutionality of electoral laws, rules quite essential to political interests. These are cases that affect large numbers of people and large sums of money. In contrast, state entities have extremely limited standing in amparo and political parties have none. Also, individuals are prohibited from challenging electoral codes through amparo. Finally, the Court itself would appear to share the view that amparo suits are generically less important than constitutional controversies and actions of unconstitutionality. In April 2002, the ministers agreed to begin returning amparo appeals to the benches, an effort designed to leave the full Court free to consider what the ministers themselves claim raise more important questions of constitutional law – constitutional controversies and actions of unconstitutionality.[17]

Distribution of Federal Governmental Power

If the implicit threat of a political reaction to unfavorable decisions conditions judicial choice, then judges might consider the ease with which politicians will be able to respond. Because it is easier for presidents and legislatures to coordinate on a response under unified government, courts ought to be less likely to challenge political authority under unified government than under divided government (Iaryczower, Spiller and Tommasi 2002, 704). As I note above, there were three phases of federal government unity during the period studied. In order to capture differences across these periods, I generate two dummy variables, *Unified* and *Unified-Pl*. The former captures the period of truly unified government under Ernesto Zedillo that lasted until September 1, 1997. The latter captures the period between September 1, 1997 and December 1, 2000, when Zedillo held the presidency but the PRI only enjoyed a plurality in Congress. Estimates for both variables will capture the difference in Supreme Court decision-making between each period and the period of divided government under Vicente Fox. I expect both estimates to be negative, indicating that the Court was less likely to strike down public policies during both periods of unified government than it was during the period of divided government.

Party Affiliation of Challenged Government

Mexican scholars have raised concerns over the possible political attachment of the Supreme Court to the Mexican President, and by implication to the PRI and all PRI-affiliated governments. If this attachment continues to be meaningful, we should expect the Court to be less likely to strike down policies associated with PRI-led governments than those associated with other parties. I include a dummy variable, *Pri*, which is coded 1 if the authority responsible for the challenged policy is either a priísta executive or a majority priísta legislature or town council. It is coded 0 otherwise. If the Court is biased toward support of PRI governments, the estimate on Pri should be negative.

Political Status of Complainant

So far I have only addressed politically oriented covariates. There is no discussion of the highly technical, legal factors that might influence the Court's decisions. One possible way of doing so is to control for the legal expertise to which different parties are likely to have access. It is likely that properly appealing to the Court's jurisprudence and carefully adhering to its dense procedural rules in support of an argument should affect the probability of a party's success. This would appear to be an especially relevant issue in Mexico, where access to good counsel is limited and the disparities between the legal representation of various parties is often great (Rubio, Magaloni and Jaime 1994, 119-134). Moreover, a number of empirical studies on litigant success rates suggest that parties likely to possess greater resources are generally more successful than those with less resources (Haynie 1994; McGuire 1995; Sheehan, Mishler and Songer 1992). Following Sheehan, Mishler and Songer (1992), I include a variable *Status*, which captures the political status of the party that brings the case to the Court, a proxy for litigant resources. Status is an ordinal measure and includes fifteen categories of increasing status from an individual to the federal executive.[18] I expect the estimate on Status to be positive, suggesting that the Court is more likely to invalidate policies as the political status of the complainant increases.

Explanatory Variables: Press Equation

Policy Importance

Internal documents of the Supreme Court raise a plausible alternative explanation of the selective publication of its case results. In 1999, the Court formalized a public relations policy statement defining the mission of its Social Communications Office (DCS), the department formally responsible for coordinating press relations. The statement indicates that the DCS should aim to influence public trust in the federal judiciary and publicize the results of cases that resolve intrinsically "important" issues of Mexican law.[19] Unfortunately, the statement does not define what the ministers mean by an intrinsically important issue, and there does not appear to be a ready-made measure of this concept. Still, it would appear that Import, as defined above, might capture exactly what makes a particular constitutional question more intrinsically important than another. The questions the Court addresses ought to matter more as the level of government challenged and precedent-setting value of the decision increase. They are intrinsically important questions for exactly the same reason that federal political officials ought to care more about the outcomes of these cases. Accordingly, we ought to expect the Supreme Court to be more likely to publicize its decisions as the federal importance of the policy increases. I expect the coefficient for Import in the second equation to be positive.

Of course, if the Court is publicizing cases merely based on the importance of the policy to federal officials, then the outcome of the case ought not to influence the probability that the Court emits a press release.[20] If the intrinsic importance of the case controls the Court's decisions to announce its resolutions, and not the direction of the merits decision, then the estimate for Strike ought to be statistically indistinguishable from zero in the presence of Import. If there is an estimated relationship between Strike and Press when Import is controlled, it is likely that politics is in part driving the selective publication of the Court's decisions.

President Góngora

The Supreme Court selects its own president from among all current members. Each president serves a four-year, non-renewable term. In 1999, the ministers elected Genaro Góngora Pimentel, and it is popularly assumed that the Court's public relations activities became increasingly aggressive and strategic following his election. In order to address this possibility, I include a dummy variable *Gongora*, which is coded 1 for all cases resolved during President Góngora's tenure and 0 otherwise. In order to test the common notion that the media savvy Góngora directed a more strategic public relations approach I estimate the interaction between Strike and Gongora. This will indicate whether or not the Court was more likely to condition its promotion of case results on the direction of the decision during the Góngora term.

President of the Republic

If the Supreme Court was using its press releases in part to provide evidence of its political independence from the presidency, then the Court should have been particularly likely to promote those cases in which it struck down an executive decree or administrative decision for which the President was directly responsible. To capture this possibility, I included a dummy variable, *President*, which indicates whether or not the executive was specifically identified as the authority responsible for the challenged policy. I then interacted this dummy with Strike, expecting the Court to be exceptionally likely to publicize decisions striking down executive policies. As it turns out, the Court only reviewed six policies for which the President of the Republic was directly responsible: two during the Zedillo administration and four during the Fox administration. The Court invalidated half of these policies, and it emitted a press release announcing each and every one.[21] While this is consistent with my expectation, it is not possible to estimate the error on the interaction term. When the Court strikes down a presidential policy, Press is perfectly determined. Accordingly, I do not include President and its interaction with Strike in the models that follow. Table 2 reviews summary statistics for the variables.

[Table 2 about here]

Estimation

As described above, the model I wish to estimate has the following form.

$$\text{Strike}^* = \alpha' x_1 - u_1$$
$$\text{Press}^* = \beta'(\text{Strike}) + \gamma' x_2 - u_2$$

If it were the case that both dependent variables were continuous, otherwise good candidates for linear estimation, and the disturbances in the two models were uncorrelated, this model could be consistently and efficiently estimated equation by equation using ordinary least squares (Greene 1997: 737). Unfortunately, the response variables here are binary, not continuous. Also, there is no a priori reason to assume that the errors are uncorrelated across the equations, and estimating this model equation by equation in the presence of such a correlation will result in biased estimates. In order to address both of these complications, Greene (1998) advocates directly modeling the joint distribution of the dependent variables.[22]

We first denote the bivariate c.d.f. of the errors $F(\bullet,\bullet)$, and assume it to be standard normal. Then, the joint distribution of (Strike, Press) is specified as follows:

$$\Pr(\text{Strike}=1, \text{Press}=1) = F[(\alpha' x_1, \beta'+\gamma' x_2); \rho] = P_{11}$$
$$\Pr(\text{Strike}=1, \text{Press}=0) = F[(\alpha' x_1, -\beta'-\gamma' x_2); -\rho] = P_{10}$$
$$\Pr(\text{Strike}=0, \text{Press}=1) = F[(-\alpha' x_1, \gamma' x_2); -\rho] = P_{01}$$
$$\Pr(\text{Strike}=0, \text{Press}=0) = F[(-\alpha' x_1, -\gamma' x_2); \rho] = P_{00}.$$

The likelihood function we wish to maximize is then,

$$L(\beta,\alpha,\gamma,\rho) = \prod P_{11}^{(\text{Strike})(\text{Press})} P_{10}^{(\text{Strike})(1-\text{Press})} P_{01}^{(1-\text{Strike})(\text{Press})} P_{00}^{(1-\text{Strike})(1-\text{Press})}.$$

As recognized by Greene, this is just the likelihood function for the standard bivariate probit model.

Results

Table 3 shows the results of the bivariate probit estimation across three specifications. At the bottom of each column, I indicate an estimate of the correlation of the disturbances, ρ. As is clear, ρ is consistently negative and statistically significant across the specifications, suggesting that a univariate probit analysis would have likely produced biased estimates. For each

specification, I first estimated a model using all of the Court's resolutions, treating dismissals for procedural default as equivalent to denials on the merits. I then estimated the same model on only those cases that the Court resolved on the merits. There is some reason to consider procedural dismissals as equivalent to denials. Mexican federal judges have a great deal of freedom to find procedural default in their cases, and scholars have suggested that they use these rules in order to reduce their caseload (Rubio, Magaloni and Edna 1994). Absent much discretionary jurisdiction, it is possible that the Court could have used the dismissal in order to avoid considering controversial cases on the merits. On the other hand, some dismissals would appear to be clearly required by law.[23] In any event, the estimated effects are almost universally consistent, independent of what we assume about the nature of a procedural dismissal.

[Table 3 about here]

Confirming theoretical expectations, it would appear that the Court was decreasingly likely to invalidate public policies as the estimated importance of those policies increased for federal political officials. Also, while the Court appears to have been more likely to publicize its resolutions as the federal importance of the policy increased, once importance is controlled, the Court was still more likely to issue a press release announcing a decision striking a policy than a decision upholding one. The coefficient for Strike is consistent and strongly significant across all specifications. The coefficient for Import is also in the expected direction and statistically significant across nearly all models. The only exception is Model 2a, in which I excluded procedural dismissals and included an interaction term for Import and Unified in order to consider whether or not the relationship between Import and Strike was particularly strong under unified government. The sign on Import's coefficient is in the expected direction in Model 2a, but it just barely loses its significance. The interaction term does not reach statistical significance in either of the models in which it is included – it appears only to reduce the significance of its component parts.

The coefficient for Status is also strongly significant and consistent across all models, suggesting that the Court was more likely to strike down a challenged policy as the political status of the complainant increased. In addition, Unified is consistently negative and significant in all specifications save Models 2 and 2a discussed above. Thus, it appears that the Court has been more active during the Vicente Fox regime than it was during the period of truly unified government – the period in which the PRI controlled both the executive and legislative branches. In Models 3 and 3a, I add an interaction term for Gongora and Strike. This term does not produce any measurable effect in either model. There does not appear to be anything special about President Góngora, at least with respect to advertising case results.

The most puzzling result in Table 3 concerns the estimate for Pri. Across all specifications, it is positive and statistically significant, indicating that the Court was more likely to strike down public policies attached to PRI-affiliated governments. A possible explanation for this result is that PRI governments were more likely to produce poorer quality legislation, or at least laws that were more likely to violate the Constitution. Yet, this is mere speculation. The result stands in stark contrast with Magaloni and Sanchez's (2000) finding that PRI-affiliated litigants fared better than others in constitutional controversies. One explanation for this difference is that Magaloni and Sanchez only considered constitutional controversies. Another is that their inference is derived from a bivariate analysis in which they could not control for the level of government being challenged. Magaloni and Sanchez find that the Court ruled against a PRI-affiliated party in less than 10% of the constitutional controversies between a PRI-affiliated party and a PAN-affiliated party. But, they also report that conflicts in which municipalities challenged the acts of states made up 86% of the controversies, and that these claims were supported in only 10% of the Court's decisions. Further, state governments were far more likely to be priísta than panista in the years covered by their analysis. Thus, it is possible that the Court was conditioning its decisions not on party, but on level of government. This possibility is

addressed by my measure of federal political importance, which captures the level of government responsible for the challenged policy.

[Table 4 about here]

While the statistical results are encouraging, the substantive results presented in Table 4 and Table 5 present a compelling summary of the relationships under analysis. Table 4 contains estimates of the probability that the Supreme Court will strike down a public policy conditioned on whether or not the federal government was truly unified or truly divided and on two kinds of policies of varying federal importance – a state law challenged via amparo and a federal law challenged via a constitutional controversy or action of unconstitutionality. All other variables are set at their median values. Across both periods of government the Court was no less than 64% more likely to strike down a state law via amparo than a federal law via a constitutional controversy or action of unconstitutionality. For state laws challenged via an amparo suit, the Court was 58% more likely to strike the policy down during the period of divided government under Vicente Fox. For federal laws challenged via a constitutional controversy or action of unconstitutionality, the Court was roughly 87% more likely to strike down the law during the Fox regime than during the period of unified government under Zedillo.

[Table 5 about here]

Table 5 shows the probability that the Court will issue a press release announcing its resolution, conditioned on the same values of Import in Table 4 and the direction of the Court's decision on the merits. The Court was extremely unlikely to issue a press release announcing that it had upheld an individual challenge to a state law through the amparo suit. The estimated probability of the Court publicizing such a resolution is only .01. Simply changing the direction of the Court's decision increased this probability to .12, an increase of 1,100%. Moreover, the estimated probability of the Court issuing a press release announcing a resolution to a constitutional controversy or action of unconstitutionality in review of a federal law or federal executive act skyrockets from .45 to .83 when the Court's decision is changed from denying the

claim to accepting it. Although these were the policies that the Supreme Court was least likely to strike down, decisions striking them down were the results the Court was most likely to publicize.

Conclusion

If judges are better able to effectively exercise their authority as public awareness and public support increase, then they ought to express significant interest in developing both awareness of and support for their courts. Evidence from Mexico suggests that members of its Supreme Court did not just take a casual interest in what people knew about their work but rather actively engaged in an effort to inform citizens about particular decisions, especially decisions striking down public policies. Further, the Court announced every decision that struck down a policy for which the Mexican President was directly responsible, suggesting that the ministers may have used the selective promotion of case results in order to provide additional evidence of its political independence.

These results are encouraging for those who value an approach to judicial decision-making that seriously considers how the public might affect inter-branch relations. While they offer no direct test of the proposition that citizens can constrain their representatives for disciplining judges, the results suggest that judges believe in value of public support. If judges actually believe that public support is critical, then theoretical models ought to reflect that belief. And surely there is nothing inconsistent about a strategic model of judicial politics in which judicial legitimacy is regarded as a highly relevant asset.

In a broader sense, judicial public relations suggests a route through which judges themselves can increase their own institutional strength. This is an encouraging possibility in as much as effective judicial review is purported to generate significant benefits for democratic stability and economic growth. However, positing such a route and knowing whether or not it works are two distinct matters. As a first step, scholars might ask whether or not judges are actually capable of influencing their media coverage. If the kinds of cases judges promote are the

same cases likely to be covered absent judicial intervention, selectively promoting case results may not increase the probability that a particular resolution is covered. Of course, even if judges are only publicizing inherently newsworthy stories, going public clearly affords them the opportunity to put their own spin on their resolutions.

I close by noting a caveat related to judicial public relations. When presidents go over the heads of legislators and take their interests directly to the voters, they do what comes naturally to successful politicians (Kernell 1993: 2-6). There is nothing particularly shocking about a president attempting to spin a critical policy debate or highlighting the signing of a law – we expect this from our political leaders. In contrast, judges are not selected for their ability to successfully influence mass opinion and there would not appear to be a traditional democratic reason for a judge to attempt to influence the way the press covers his work. Indeed, the legitimacy of un-elected judges is presumed to depend on their being in some way insulated from daily politics. In light of this critical difference between a judge and a politician, judges likely face an important trade-off when considering whether or not to pursue public relations, an inherently political activity. While they may obtain benefits from influencing their media coverage, they may risk generating an image of a truly politicized court. It is noteworthy that Marshall's essays following the McCulloch resolution were published under a pseudonym. While this was the norm for much political commentary in the early 19th Century, Marshall's choice to publish anonymously surely must have appeared obvious to a man so interested in developing an image of the federal bench as essentially apolitical and thus worthy of its expanding jurisdiction. How modern courts navigate the trade-off between publicity and politicization may be a critical determinant of the aggressiveness with which judges pursue their interests and by implication the degree to which judges are able to build their institutional strength.

Appendix

Selection Rules

The Supreme Court resolved 3,084 distinct constitutional actions between January 1, 1995 and December 31, 2002. The data set restricts the number of analyzable cases to 1,536. This reduction reflects an attempt to resolve the problem that distinct actions were clearly not independent observations for the purpose of statistical analysis. The problem results from the fact that when multiple individuals challenge identical public policies the Supreme Court rarely consolidates the cases. Thus, what might be considered one constitutional case results in tens, sometimes hundreds, of distinct case files. Sometimes these cases raise different issues. In so far as they do, I treat them as different observations. However, these cases frequently attack the same legal provision for identical reasons. As I note in footnote 13, one federal-municipal conflict generated 10% of the Court's total constitutional actions, all filed by different municipalities challenging the same congressional procedure. The Court resolved all of these actions on the same day for precisely the same reason. In order to address this problem, I considered distinct actions to be identical observations according to the following four rules. The rules are designed to ensure that the distinct constitutional actions were identical and ought to be treated as such.

Policy Rule: The challenged law, regulation, administrative decision or decree must be identical across case files.
Resolution Date Rule: The resolution date must be identical across case files.
Voting Rule: The individual votes of the Court's members must be identical across case files.
Rationale Rule: The rationale for the decision must be identical across the case files.

The data set includes the first action in a string of identical actions as determined by the rules above. Cases are assigned case numbers according to the date and time at which they arrive at the Court's Parties Office. As a result, the order of cases is generated by random process induced by the postal service.

Status

In so far as Status is intended to be a proxy for attorney quality, I afforded considerable status to both the state and federal judiciary. While this may be an appropriate choice for the federal judiciary it may seriously overestimate the legal quality of counsel representing state judges. In order to address this possibility, I ran the analysis with a variant of Status in which state judiciaries are considered to have less status than state legislatures. I moved the remaining categories up. The results are robust to this change. Status is measured as follows.

1 individual or private business
2 municipality
3 union
4 civil or religious association
5 small political party (All parties not included in 7)
6 corporation
7 large political party (PRI, PAN, PRD)
8 university
9 state legislature
10 state executive
11 federal commission
12 federal congress
13 state judiciary
14 federal judiciary
15 federal executive

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Table 1. Joint Distribution of Strike and Press (Row Percentages)

	Was Press Release Issued?		
Was Policy Invalidated?	No	Yes	Total
No	777 (95%)	44 (5%)	821 (100%)
Yes	234 (76%)	75 (24%)	309 (100%)
Total	1011 (90%)	119 (10%)	1130 (100%)

Note. Shows joint distribution of Strike and Press with row percentages in parentheses for cases resolved after September 1, 1996. Ten percent of all cases received a press release. The Court announced twenty-four percent of cases in which it struck down the policy. In contrast, the Court only announced only five percent of the cases in which it upheld the policy. $\rho=.28$, with $p<.001$

Source. Suprema Corte de Justicia de la Nación.

Table 2. Summary Statistics and Variable Descriptions

Variable	Description	Mean	Std. Dev.	Min	Max
Strike	1 if Supreme Court declared a portion of policy under review unconstitutional and 0 otherwise.	.27		0	1
Press	1 if Supreme Court issued a press release announcing its decision and 0 otherwise	.11		0	1
Import	1 if local amparo, 2 if local controversy or action, 3 if state amparo, 4 if state controversy or action, 5 if federal amparo, 6 if federal controversy or action	4.2	0.96	1	6
Unify	1 case resolved before September 1, 1997 and 0 otherwise	.27		0	1
Unify-Pl	1 case resolved on or after September 1, 1997 and before December 1, 2000. It is coded 0 otherwise	.63		0	1
Party	1 if authority challenged is affiliated with the PRI and 0 otherwise	.49		0	1
Status	Ordinal scale of the complainant's social-political status.	3.9	2.9	1	15
Gongora	1 if case resolved during the Góngora term and 0 otherwise.	.51		0	1

Note. Summarizes data analyzed in this section. For the binary variables, means represent the percentage of 1's.

Table 3. Determinants of Supreme Court Decisions and Press Releases

	Model 1 (All cases)	**Model 1a**	**Model 2 (All cases)**	**Model 2a**	**Model 3 (All cases)**	**Model 3a**
Strike						
Import	-.16 (.05)***	-.15 (.05)***	-.12 (.06)**	-.09 (.06)	-.16 (.05)***	-.15 (.05)***
Unified	-.45 (.15)***	-.74 (.17)***	-.01 (.41)	-.12 (.43)	-.44 (.15)***	-.73 (.17)***
Unified-Pl	-.19 (.13)	-.39 (.15)**	-.17 (.13)	-.37 (.15)*	-.18 (.13)	-.39 (.15)*
Pri	.17 (.09)*	.20 (.10)*	.21 (.10)**	.26 (.11)*	.17 (.09)*	.20 (.10)*
Status	.07 (.01)***	.08 (.02)***	.07 (.01)***	.08 (.01)***	.07 (.01)***	.08 (.02)***
Import* Unified	--	--	-.11 (.10)	-.18 (.10)	--	--
Constant	-.08 (.25)	-.18 (.27)	-.26 (.30)	-.10 (.33)	-.09 (.25)	-.17 (.27)
Press						
Strike	2.12 (.25)***	2.07 (.23)***	2.10 (.25)***	2.05 (.23)***	1.99 (.30)***	1.97 (.28)***
Import	.35 (.06)***	.39 (.06)***	.35 (.06)***	.39 (.06)***	.35 (.06)***	.39 (.06)***
Gongora	.06 (.10)	.08 (.11)	.06 (.10)	.07 (.11)	-.03 (.14)	-.001 (.16)
Strike* Gongora	--	--	--	--	.17 (.20)	.14 (.22)
Constant	-3.37 (.28)***	-3.61 (.31)***	-3.36 (.28)***	-3.60 (31)***	-3.32 (.28)***	-3.57 (.32)***
ρ	-.70 (.14)**	-.65 (.14)**	-.68 (.15)**	-.76 (.14)**	-.68 (.15)**	-.64 (.15)**
N	1128	964	1128	964	1128	964

Note. Estimated bivariate probit models of Strike and Press. Standard errors are in parentheses. Models 1a, 2a, and 3a discard all observations in which the Supreme Court dismissed the case for procedural default.
*p<.05, ** p<.01, *** p<.001.

Table 4. Predicted Probability of Supreme Court Striking Down Challenged Policy

	Government Type	
Federal Policy Importance	Unified under Zedillo (Until September 1, 1997)	Divided under Fox (After December 1, 2000)
State Law Challenged via Amparo	.29	.46
Federal Law challenged via Controversy or Action	.15	.28

Note. Cell entries indicate predicted probability of the Supreme Court invalidating a challenged for a constitutional violation, conditioned on the level of federal policy importance and whether or not federal government was unified. All other variables are set at their median values.

Table 5. Predicted Probability of a Press Release Announcing Supreme Court Resolution

	Was Policy Invalidated?	
Federal Policy Importance	No	Yes
State Law Challenged via Amparo	.01	.12
Federal Law challenged via Controversy or Action	.45	.83

Note. Cell entries indicate predicted probability of the Supreme Court issuing a press release announcing its decision, conditioned on the level of federal policy importance and whether or not it invalidated the challenged policy. All other variables are set at their median values.

[1] The selective promotion of case results via press releases has become a particularly common practice in Latin America. An exhaustive search of high court websites in the region uncovered press releases announcing only a subset of decisions in Mexico, Venezuela, Ecuador, Guatemala, Paraguay, and Peru – roughly 30% of the Latin American states.

[2] "Top Venezuelan judge resigns," 25 August 1999, BBC News, online, http://news.bbc.co.uk.

[3] This is not to say that judges' decisions are unrelated to either existing jurisprudence or their own political ideologies. The point is that changing political environments can have powerful effects on judicial decisions, especially when judges might expect to be disciplined for undermining the interests of relevant political officials.

[4] A proper statement of Helmke's claim is that judges that do not enjoy secure tenure ought to be most likely to behave strategically as the importance of the policy under review increases for the incoming government. I take this claim to be a special case of the general claim that strategic behavior ought to be most evident in cases deemed important by whatever government official is likely to discipline the court.

[5] Policy importance in Vanberg's model is captured by the parameter α, which measures the cost the legislature bears by giving up its policy if struck down by the court.

[6] Of course there are policies that enjoy little public support. The assumption here is that, in general, majorities support the public policies that become judicialized, because the political process ought to select out those policies that do enjoy majority support.

[7] I am unaware of research on judicial framing effects outside the United States; however, Domingo (1999) reports results from a Mexico City poll that suggest that respondents who had previous experience with the judiciary were more likely to trust ministers of the Mexican Supreme Court to make impartial decisions. These results provide some measure comparative support for the notion that familiarity with the judiciary breeds legitimacy.

[8] Here I assume no inter-temporal effects discussed by Helmke (2002, 292-293). The hypothesis can be reconciled with her model simply by changing the political official whose preferences are deemed relevant.

[9] The Comparative Judicial Database Project, under the direction of C. Neal Tate, Stacia L. Haynie, Reginald S. Sheehan and Donald R. Songer, may yet develop the data necessary to systematically address this issue more than one country. At present, I understand that it is still under construction.

[10] Another advantage of examining the Mexican case over a relatively short time period is that it is unlikely that its diffuse public support, a concept shown to develop over a long period of time (Gibson, Caldeira and Baird 1998, 353), changed significantly over the period studied.

[11] Replication material for all analysis contained herein are available from the author upon request. Summaries of the Supreme Court's decisions are publicly accessible at either the Central Archives in Mexico City or through the Court's web site, www.scjn.gob.mx. All full opinions are currently available only at the Central Archives. In addition to the three kinds of constitutional cases summarized in the data set, the Supreme Court also hears controversies involving identifiable contradictions between jurisprudential theses across the circuits. In so far as these actions are reported as conflicts between circuits, it is difficult to systematically identify the particular interests that might be affected by any one decision. Accordingly, these cases are excluded from the data set.

[12] On the differences between these actions see Carranco Zúñiga (2000) or Cossío (2002).

[13] Pursuant to a 1988 constitutional amendment, the Supreme Court enjoys a limited power of discretionary review through what is called *atracción* (Mexican Constitution, Article 107, Section 8). If the Court deems an issue raised in an appeal ordinarily outside of its appellate jurisdiction fundamentally important to the law, it may exercise attraction in order to take up the matter. In

addition, the Federal Attorney General may request that the Court take up a case of national interest, and circuit courts may certify appeals for Supreme Court review.

[14] Between 1995 and 2002 the Supreme Court resolved 3,084 cases. The data set restricts the number of analyzable cases to 1,536. A 50% reduction in observations clearly deserves an explanation. Many cases with distinct case numbers deal with absolutely identical legal issues and resulted in identical resolutions resolved by an identical vote on the same day. For example, a major constitutional reform on indigenous rights reform passed by Congress in the summer of 2001 generated 292 distinct constitutional controversies filed by municipalities from across the country. Each of the 292 cases challenged the procedures Congress adopted when considering the amendment. These cases make up nearly 10% of the Court's total constitutional caseload, yet they were all formally resolved on September 6, 2002, by the same vote and for the same reason. These cases are clearly not independent of each other and I do not treat them as if they were. For this controversy and all others like it, I include only one of a set of identical cases in the final data set.

[15] The Court may establish formal jurisprudential theses in amparo. A jurisprudential thesis is binding on all lower federal court judges; however, it is not clear that theses significantly affect bureaucratic decisions to enforce laws. Legal principles may become part of the jurisprudence when the Court establishes that it has invoked a similar principle in five consecutive cases (Ley de Amparo, Article 192,). These theses may be abrogated only by a coalition of eight Ministers voting contrary to provision under analysis (Article 194).

[16] When the Federation moves a constitutional controversy against the laws or acts of a state or municipality, decisions supporting the federation's claim, when made by a super-majority of eight ministers, set general effects. Similarly, if a state moves a constitutional controversy against a municipality, the Court's decision will govern that state if it rules with the state by a super-

majority vote of eight. In all other cases, the Court's decisions only affect the immediate parties to the case. Similarly, for the action of unconstitutionality, the effects of the decision are general if Court resolves the case by a super-majority of eight votes. Otherwise, the decision only affects the immediate parties to the case (Mexican Constitution, Article 105).

[17]See Acuerdo [Accord] 4/2002, Suprema Corte de Justicia de la Nación.

[18] Status offers the added benefit controlling for the possible influences on Court decisions generated by the plaintiff. Even if it is not a reasonable proxy for attorney quality, Status's inclusion is absolutely necessary in order to control for the potential political influence generated by the party moving the action. This is to recognize that there is a difference between the Supreme Court considering a municipal challenge to a state law and the Court hearing a federal challenge to the same law.

[19] This policy is published in *Compromiso, órgano informativo del Poder Judicial de la Federación*, número 1, Julio-agosto 1999, pp. 21-22.

[20] Suppose that there is an estimated positive relationship between striking down the policy and issuing a press release. Is this behavior consistent an intrinsic importance explanation for case promotion? It is only if we assume that either, 1) intrinsically important questions are correlated with the Court's understanding of constitutionality or 2) the direction of the Court's decision affects the question's intrinsic importance. There are two reasons why we should not make either of these assumptions. First, it is not clear why the Court would be more likely to strike down public policies when the constitutional questions presented to it are in some way more important than others. The U.S. literature does evince an effect for issue salience on judicial behavior, but its central findings would not have us believe that salience is linked to any particular direction of the Court's decisions on the merits (Epstein and Segal, 2000; Maltzman and Wahlbeck, 1996). Second, the Court's decisions on the merits simply cannot affect the importance of a case if by

importance we mean that the case raises an issue of intrinsic constitutional significance. Whether or not the Court in fact rules that the President of the Republic must provide otherwise confidential information to the Congress when private debt is converted into public debt, the underlying constitutional importance of the question is clear. This is not to say that striking down the constitutionality of law is an "unimportant" event. Surely we might say that it is an unusually important event. But, when we say so we invoke a political understanding of importance, one that perhaps recognizes that the act of exercising judicial review matters in some significant way to the functioning of a democracy. However, the Court's possible explanation under analysis is apolitical. Thus, if we observe the Court's decisions over publishing press releases responding to the direction of its decisions, then we may infer that this behavior is consistent with a public support account.

[21] The first case involved arguably the most important resolution in the modern history of the Supreme Court, a decision requiring President Zedillo to turn over sensitive financial information to a congressional committee directed by opposition party members (Controversia Constitucional 26/99). The second case involved the invalidation of a President Fox decree establishing a federal day light savings time (Controversia Constitucional 5/2001). The third case involved the invalidation of President's Fox's electrical reform (Controversia Constitucional 22/2001).

[22] Also see Maddala (1983: 123) for a general discussion of recursive models of jointly determined binary dependent variables.

[23] In 2001, President Fox expropriated a plot of communal land, setting it aside for the construction of a new Mexico City airport of increased capacity. The town council of Texcoco, in the state of Mexico, moved a constitutional controversy against Fox, challenging the expropriation. The expropriation also resulted in a series of protests from communal property owners, mostly indigenous peasants. After much domestic and international pressure, Fox reversed his decision, effectively scrapping the airport plan. In the wake of the reversal, the

Supreme Court dismissed Texcoco's controversy on the grounds that the cause of action ceased to exist. Clearly, this is a case in which the Court's procedural dismissal is not equivalent to a denial of Texcoco's claim on the merits.