

THE UNIVERSITY OF CHICAGO

CORRUPTING ACCOUNTABILITY: ELITE CONTROL AND CORRUPTION  
PROSECUTION IN COMPARATIVE PERSPECTIVE

A DISSERTATION SUBMITTED TO  
THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES  
IN CANDIDACY FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

BY

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CHICAGO, ILLINOIS

AUGUST 2017

Dedicated to Liliana and Eugenio.

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## ACKNOWLEDGMENTS

The completion of this thesis could not have been possible with the assistance of so many people that is impossible to list them all. I was lucky enough to have not one but two excellent advisors that shaped my understanding of the discipline and my own research. I first started working with Dan Slater well into my doctoral program, and Monika Nalepa joined my committee when she became a professor at UofC. I seriously could have not asked for better chairs. For your advice and trust in me and my work, I thank you immensely.

In addition, a number of faculty members patiently read my work and gave me great feedback. John McCormick's reflections on accountability and the shortcomings of democracy were fundamental for my understanding of justice and punitive practices. Alberto Simpser read many early drafts and pushed me to carefully think about research design and other cases. John Brehm not only offered advice on my empirical results, but more also spent uncountable hours mentoring (*truly mentoring*) me on how to be a good instructor, a good methodologist, and a good political scientist.

My friends at the department of Political Science at UofC were also crucial in the completion of this dissertation. Although we lived just a few blocks apart in Mexico, I had to travel thousands of miles to befriend Tania Islas. That friendship gave me sanity during the first years of graduate school. Thanks to Morgan Kaplan and Adam Dean for sitting with me at the stairs of the Divinity school during lunch hours, trying to solve research design issues. Thanks to Matthias for those conversations in the office, and for the shared love of good food. Chad Levinson is the most an amazing co-worker who put up with my conversation almost every day for three years, and Fleck, who reminded me how important it is to have a buddy. And a big, big, thanks to Yuna Blajer whom I consider one of the most wonderful people I have been fortunate enough to meet in my life. Yuna, I admire you so much and I thank you for all your support.

Last, but not least, my family. My parents supported me unconditionally throughout my

graduate studies and their love kept me grounded even when I doubted myself. My sister Liliana has always been my accomplice, and without those hours-long phone calls I am not sure I could have accomplished anything. My brother Eugenio said goodbye to me at the airport all those years ago, and lately he has greeted me as a great person and a good man. And of course, thanks to Daniel. You make me a better person every day.

## ABSTRACT

How different is the judicial prosecution of corrupt elites across regime types? It is widely believed that democracies are better than authoritarian regimes at holding corrupt politicians accountable, but this claim has not been systematically formalized nor tested. My dissertation addresses this question in three interventions, each of which makes a distinctive contribution to the discipline. First, using a formal model of judicial prosecution of corrupt political elites, I show that executives in democracies are more likely than those in authoritarian regimes to prosecute other politicians. This, however, can be attributed to the fact that authoritarian leaders can rely on intimidation tactics to control and curb opposition, and not necessarily because democracies increase oversight of those in power. Contrary to what existing research has suggested, my model shows that politicized prosecution, or the use of prosecution as a way to control or curb opposition, is more commonly found in places with democratic characteristics than in authoritarian regimes. My second intervention is empirical: I test the implications of my theory using original data of judicial investigations conducted against Mexican governors in the last 27 years. The data encompasses a period that maximizes subnational variation of regime type, while the outcome of interest, judicial investigations, is recorded at the individual level. This design enables me to analyze occurrences of judicial processes as well as instances of impunity across institutional settings. The empirical analysis shows that prosecutions in states with democratic institutions are more frequent, and that they are consistent with a politicized use of the judicial system. To my knowledge, this is the first dataset that observes prosecution at the individual level across regime types. Finally, I study the link between prosecution and accountability as understood by the citizens. I study two scandalous prosecutions in Mexico: the 1989 arrest of *La Quina*, the leader of the oil union and the *michoacanazo*, a large sting operation conducted in 2009 by president Felipe Calderón. Both arrests came about in very different institutional contexts, one during the golden authoritarian years and the other a decade after the inaugural elections of 2000. My analysis, however, shows that public

accounts of these cases are similarly ambivalent: both arrests were considered authoritarian moves aimed at controlling political opponents, yet simultaneously legally adequate and desirable. I conclude by connecting these three interventions to call into question two widely held assumptions in the literature: that judicial prosecution of political elites are brought by different mechanisms in democracies than in authoritarian regimes, and that judicially prosecuting corruption is always an instance of accountability.

## CHAPTER 1

### A TALE OF TWO CORRUPT POLITICIANS

In May 2013, a former governor of the Mexican state of Aguascalientes, Luis Armando Reynoso Femat, was arrested. He was accused of the illegal sale of lands during his time in office, although more investigations related to his administration were still pending. A few months after his arrest, he obtained two *amparos*, judicial resources aimed at guaranteeing the protection of the constitutional rights of a citizen, and was freed only to be arrested again in July 2015 on a charge of fiscal fraud.<sup>1</sup> These arrests were not unjustified. Besides the actual charges that were brought up in court, him and his family had been involved in several corruption-related scandals: he was accused of faking the acquisition of hospital equipment at exorbitant prices, his son starred in a YouTube video that showed his extravagant birthday party that included a car being dipped into a pool, and his daughter was known for her love of Louis Vuitton purses.

Reynoso Femat's arrests, although unsurprising, stand in strike opposition to the impunity that surrounds another [in]famous Mexican governor: Mario Marín. In 2006, Marín, then governor of Puebla, was taped having a conversation with a prominent businessman who had been accused by journalist Lydia Cacho of being part of a pedophile network. In that conversation, the governor is thanked for his help in 'taking care' of Cacho, who had been illegally detained in Cancún and transported across several states to Puebla city. Despite the publicity received by the taped conversation, and the scandal that ensued, Mario Marín was never arrested. Cacho had denounced him for his criminal actions, and the case even made it to the Supreme Court, where an investigative commission determined that Marín had, in fact, violated Cacho's rights. Despite the overwhelming reason to investigate, and the great public interest in the case, the Supreme Court dropped the case.<sup>2</sup>

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1. See reports by Méndez (2014), CNNMexico (2015), and Noticieros Televisa (2015).

2. For a comprehensive chronology of this case, see Castro (2008).

Corruption scandals like these are not uncommon in Mexican politics. On the contrary, corruption or alleged corrupt actions overcrowd newspapers, and many of the reported wrongdoings involve high-level politicians or their cronies. What does not abound, however, is the prosecution or investigation of those politicians.<sup>3</sup> In a place where corruption seems to exist everywhere, but not all politicians are brought to justice, why are some politicians investigated while others remain untouched?

This question is particularly puzzling considering that one of the most widely held assumptions in Political Science is that democratization would improve accountability, even if it took a while. In democracies, electoral competition structures the incentives to produce oversight of those in power, conduct fair investigations and trials if necessary, and fairly punish those transgressors or abuses of public office. However, this supposition cannot account for the observed patterns of corruption and impunity: Mexico conducted a series of institutional reforms that gave independence to the judiciary, and successfully transitioned to an electoral democracy in 2000. Despite the introduction of a transparency law that was internationally praised, and the constant public outrage for the abuses committed by politicians, Mexico is still far from having a functional system to hold politicians accountable.

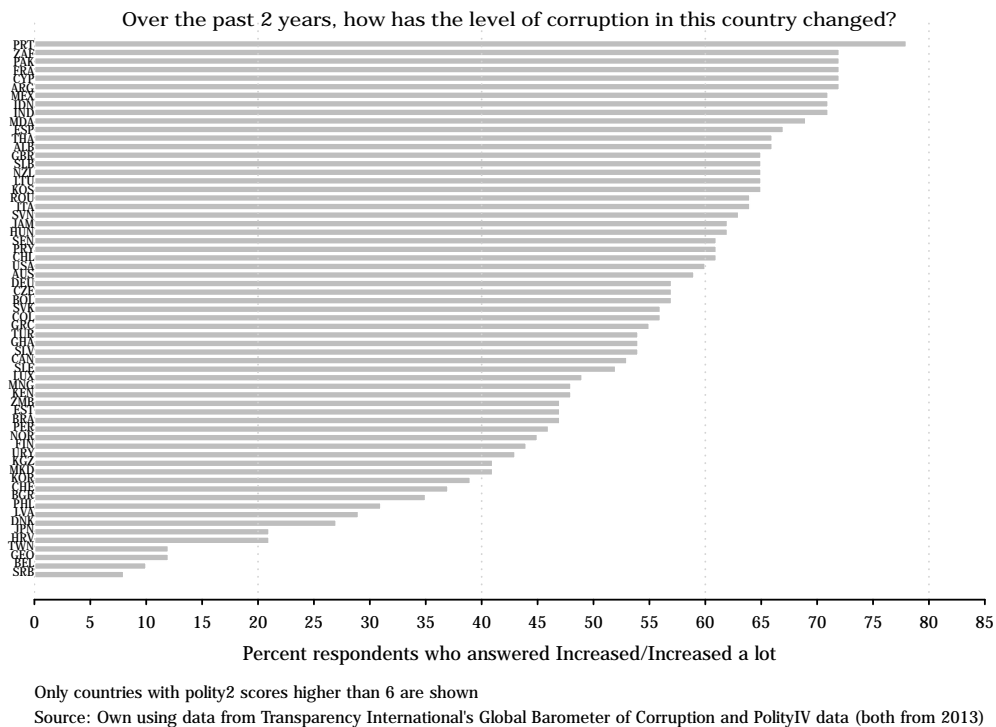
Furthermore, this accountability deficit is by no means specific to Mexico. In recent years, many countries have made an effort to create or reform institutions and legislation to stop corruption and abuses of power. Such efforts are palpable in the unprecedented investment in agencies and institutions that launch inquiries, arrest, and even punish suspected or known corrupt politicians (Freedominfo, 2013; World Bank, 2014). Yet, as shown

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3. A recent study on impunity placed Mexico in second to last place of the 59 countries studied (CESIJ-UDLAP, 2015), evidencing what renowned crime and justice expert Alejandro Hope claimed: “in Mexico, impunity is queen.” Quoted in Monroy (2014). It is important to note, however, that the past few months have witnessed an unprecedented surge of judicial processes and investigations against former governors. Just in the first 4 months of 2017, four former governors were arrested (Rodrigo Medina on January, Flavino Ríos in March, Javier Duarte and Tomás Yarrington in April), and federal investigations are opened for at least 6 others (Eugenio Hernández, César Duarte, Roberto Borge, Jorge Herrera, Humberto Moreira, and Guillermo Padrés, whom had been previously arrested).



Figure 1.2: Perceptions of corruption increase in democratic countries



ful incentives to prosecute and punish the miscreants (or at least to be seen to do so)” (Sandholtz & Koetzle, 2000, p. 38). It is precisely this puzzle the one that this dissertation sets out to answer: Is corruption prosecution different across regime types? When and why are politicians investigated? What are the politics behind the investigation of corrupt politicians? And finally, is judicially prosecuting a corrupt politician always an instance of accountability?

I begin addressing these questions in chapter 2, where I offer an overview of the existing literature that deals with corruption prosecution, paying attention to those studies that have found that democracies are better than authoritarian regimes at holding corrupt politicians accountable. I then argue that contemporary literature considers prosecution as a phenomena peripheral to regime type, and not an object worthy of study by itself. This theoretical limitation is further exacerbated by the lack of reliable data of corrup-

tion prosecution across regime type. As a result, scholars often label rates of prosecution under democracies as proxies for accountability, whereas judicial processes under authoritarianism are used as examples of elite control. This, I argue, overlooks the fact that, when theorizing about accountability, cases of occurrence of prosecution are just as important as instances of impunity.

I address these shortcomings in three chapters, each of which make a specific contribution to the literature. In chapter 3, I develop a formal model of judicial prosecution of corrupt political elites. My model conceptualizes corruption prosecution as one way in which incumbents curtail opposition. The model finds that executives in democracies are indeed more likely than executives in authoritarian regimes to prosecute members of the elite. Contrary to what existing research has suggested, however, this can be attributed to the fact that authoritarian leaders can often rely on intimidation tactics to control and curb opposition, and not necessarily because democracies increase oversight of those in power. From the model I derive a series of implications, all of which suggest that prosecution as a way to control or curb opposition is more commonly found in places with democratic characteristics.

Chapter 4 tests the implications of the model using a novel empirical strategy that analyzes individual instances of prosecution or impunity, and exploits subnational variation of regime type. This strategy relies on an original dataset of judicial investigations of outgoing Mexican governors from 1990 to 2016. For all governors during that period, the outcome of interest is whether they were subject to a judicial investigation by state authorities once they left office. By measuring the dependent variable at the individual level, the analysis sheds light on explaining occurrences and non-occurrences of judicial processes, instead of explaining variations in rates of prosecution. In addition, the period recorded encompasses the slow and geographically uneven introduction of competitive elections and institutional reforms which maximizes subnational variation of democratic

and authoritarian characteristics. To my knowledge, this is the first dataset that observes prosecution at the individual level across regime types.

The empirical analysis shows that governors that rule in democratic states prosecute their predecessors at higher rates than governors in authoritarian states, and that prosecutions in democracy are consistent with a politicized use of the judicial system. Specifically, governors are also more likely to investigate politicians from different parties more frequently than their co-partisans *even after* controlling for underlying corruption levels. These results are robust to a series of alternative estimations.

My third contribution is on the link between prosecution and accountability as understood by the citizens. I study two scandalous prosecutions in Mexico: the 1989 arrest of La Quina, the leader of the oil union and the *michoacanazo*, a large sting operation conducted in 2009 by president Felipe Calderón. Both arrests came about in very different institutional contexts, one during the golden authoritarian years and the other a decade after the inaugural elections of 2000. However, my analysis shows that public accounts of both cases are remarkably similar. I find evidence that the cases were considered as legally adequate, desirable, yet at the same time they were authoritarian moves aimed at showing power, and not a move to hold those involved accountable.

Taken together, these three chapters problematize the notion that judicially prosecuting corrupt politicians is always an instance of accountability. Chapter 3 proposes a mechanism through which democratic governments are actually more incentivized than authoritarian ones to use prosecution as a tool to control or weaken political competitors. Chapter 4 presents empirical evidence that supports the existence of these politicized prosecutions. Chapter 5 analyzes two instances where prosecution should have meant accountability, yet it did not. Accountability, I conclude, can be corrupted even when conducted in a lawful manner.

## CHAPTER 2

# CORRUPTION, PROSECUTION, AND ACCOUNTABILITY IN THE LITERATURE

In the past couple of decades, political science developed an interest in the phenomena of grand corruption, or the illegal use of public office for private gain by politicians in high levels of government.<sup>1</sup> Originally, grand corruption was a central economic concept to understand why some privatization processes of the 1990s and 2000s had failed in delivering the economic growth that they had promised, producing instead dysfunctional markets.<sup>2</sup> As Stiglitz (2003) put it: “Perhaps the most serious concern with privatization, as it has so often been practiced, is corruption” (p. 58). Grand corruption was crucial to understand market failure, and as such focused its attention to issues such as large bribes or payouts received by politicians to favor certain corporations or policies (Rose-Ackerman, 1996; Lambsdorff, 2005).

Currently, even years after the privatization reforms took place, grand corruption seems to have expanded: it occurs in developing and developed countries alike,<sup>3</sup> and takes on a multiplicity of forms that go beyond the usual kickback-for-deregulation exchanges. In countries where drug trafficking and organized crime abound, politicians often use their

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1. This definition follows the literature that consistently emphasize the privatization of what is public (Treisman, 2000), and the illegality of such actions as an important feature of the phenomena of interest (Fisman & Gatti, 2002; Svensson, 2005). In addition, it focuses on abuse by politicians in high levels of government, such as governors or cabinet members. By adopting this definition, I emphasize the empirical characteristics that define my outcome of interest (abuse of public office and illegality of such abuse), while stepping aside from normative discussions of what constitutes corruption.

2. Social sciences literature has developed an incredibly rich body of literature identifying political corruption as the main culprit of botched rapid privatization processes that resulted in defective markets. Rapid privatization and a state incapable of preventing self-dealings produced markets incapable of reviving the stagnant economy in Russia (Black *et al.*, 2000) and the former Soviet Republics (Kaufmann & Siegelbaum, 1997, p. 421). In Latin America, market reforms shaped available resources and politician’s discretion over those resources, thus increasing the frequency of corrupt transactions (Manzetti & Blake, 1996).

3. For example, this year a top-level chief executive of Samsung was accused of giving more than 30 million dollars to a foundation that had been linked to South Korea’s president. The scandal was slightly more bizarre than a simple bribe, and included the undesirable influence exerted by the leader of a Christian cult (BBC, 2017).

political office to favor criminal organizations.<sup>4</sup> Politicians have also been accused of funneling public resources to their own pockets, as Brazil's *Petrobras* scandal recently showed. In short, political elites abuse their office in a variety of ways, and lot of these abuses are illegal. What this dissertation is interested in explaining is why political elites sometimes they face judicial consequences for engaging in corruption, whereas sometimes they do not.

This chapter situates prosecution of grand corruption theoretically and empirically, emphasizing the existing contributions and shortcomings of the literature. I begin by noting that the literature has often treated corruption prosecution as epiphenomenal to corruption and/or authoritarian control. I then provide an overview of the determinants of corruption prosecution as explained in the literature, which are mostly institutional in nature. I conclude by making a case of understanding corruption prosecution as a political phenomena worthy of its own theoretical framework.

## 2.1 Corruption and its prosecution

The study of prosecution of grand corruption has remained peripheral to the study of corruption or of authoritarian politics. For example, prosecution is often invoked in the literature using somewhat vague terms such as the 'effectiveness of the legal system' (see Treisman, 2000; Jain, 2001; Herzfeld & Weiss, 2003, for example) to explain the characteristics of the judiciary that are associated with low levels of corruption. Terms like these are neither analytically nor empirically useful to understand prosecution: it is not immediately clear which characteristics make a legal system effective, or how to empirically observe such characteristics.<sup>5</sup>

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4. Either because they receive bribes, or because they are extorted into collusion by criminal organizations Dal Bó *et al.* (2006).

5. Of course, the argument as it stands is tautological: effective legal systems are effective precisely *because* they tackle corruption.

Some scholars further develop theories connecting the legal system and corruption. Ades & Di Tella (1999) calls this the “lawyer’s approach:” the idea that corruption will diminish by “raising the deterrence provided by the legal system by increasing the probability of detection, apprehension and conviction, and the penalties for malfeasant behaviour” (p. 7). The underlying logic seems simple and intuitive: a judicial system that punishes bad behavior will increase the costs of engaging in corruption, making it less attractive for politicians to engage in.

Still, how to appropriately test these theories is still unclear. Measures such as frequency of prosecutions are not necessarily useful: few judicial processes signal an effective legal system if there is no corruption, but they would signal ineffectiveness if corruption is rampant. Even more nuanced indicators, such as proportion of corruption cases investigated or targets prosecuted are almost impossible to find, both because “corruption does not lend itself to measurement” (Galtung, 2006, 101) and because of the difficulty in obtaining data on prosecutions.

In view of the empirical difficulties when studying corruption prosecution, most of the literature has opted for using particular institutions to proxy the effectiveness of the legal system, and correlate them with corruption outcomes. Among these, two of the most relevant ones used to explain when is prosecution likely to be initiated are electoral competition and the independence of the judicial system. I explain each of these in turn, underlining their possibilities and limitations when addressing the specific question that this dissertation aims to answer.

### *2.1.1 Electoral and political competition*

It has long been argued that places where there is meaningful electoral competition either have less corruption or have public officials that are better at dealing with it. Most of the current literature is devoted to studying the existence of a direct effect of elections on corruption via ‘voting out’ corrupt politicians (Tavits, 2007; Krause & Méndez, 2009; Crisp

*et al.*, 2012). More importantly for this dissertation, however, the literature also develops what I refer to as the ‘monitoring’ effect of elections: an effect that does not rely on vertical accountability relationships, but on horizontal ones.<sup>6</sup>

The ‘monitoring’ effect refers to the alleged incentive that exists in polities with regular free and fair elections. In these places, politicians from competing parties are incentivized to oversee the others’ behavior (Rose-Ackerman, 1999, esp. ch. 8) and to denounce it publicly in an effort to win elections. This monitoring increases the probability of prosecution (conditional on corruption). In the medium or long term, free and fair elections should decrease overall corruption levels either through increasing the cost of corruption if caught (Ades & Di Tella, 1997, p. 508), or by putting undesirable politicians behind bars.

However, this monitoring effect will be successful only insofar as public denunciation is politically advantageous. This is no minor caveat: unsuccessful prosecution can result in an increased approval for the prosecuted politician, or at the very least decreased support for the incumbent. This happened in 2005 when Mexico’s city mayor Andrés Manuel López Obrador, a then charismatic figure and major candidate for the presidential election in 2006, was submitted to a *desafuero*, a process that removes public officials from the immunity from prosecution, charged with contempt of court. The *desafuero* was initiated by President Vicente Fox, and approved by the Chamber of Deputies but the subsequent social pressure and protests, that claimed the prosecution was a political maneuver to weaken López Obrador, made president Fox desist from continuing the judicial process.<sup>7</sup>

Even in cases where the public thinks that the targeted politician is corrupt and that his or her prosecution is legally justified, it is not clear that the public will automatically respond by withdrawing support from the prosecuted politician. Recent empirical studies have shown that citizens might be willing to overlook corruption when it has some benefits

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6. Vertical accountability refers to those relationships between voters and their representatives, whereas horizontal accountability refers to the limits and checks and balances between representatives in government. See Schedler (1999).

7. See García (2013).

to the public (Fernández-Vázquez *et al.* , 2016), and more generally, that the impact of information on electoral preference might be conditioned by contextual issues such as clientelistic practices (Medina & Stokes, 2007).

In addition, the monitoring effect might be hindered when the competition is within parties. Politicians within a party might be able to rely on already established channels to diminish conflict over candidacies or appointments. It could be that in places where parties have to rely on voters to win elections, politicians might be even more cautious in prosecuting members of her own party. This is so because parties can be thought of as ‘labels’ (Snyder Jr & Ting, 2012) and by prosecuting a member of one’s own party could possibly spillover the effects, and cause electoral losses for other candidates of the same party.<sup>8</sup> Therefore, the monitoring effect is a less than perfect mechanism by which electoral competition increases prosecution. Even assuming that denunciation will result in prosecution, a number of contextual variables (such as clientelism and people’s perceptions of a judicial prosecution) weakens the links between competition and denunciation.

It is interesting to note that scholars of authoritarian regimes have developed a very similar argument that emphasizes the role of political (not electoral) competition in incentivizing prosecution. In places with no elections, prosecution serves the incumbent’s grip in power (Magaloni, 2008), although as Pereira (2005) shows, the efforts to exert repression through legal means vary among regimes. Even in competitive authoritarian regimes—regimes where there are elections but these are neither free nor fair—judicial prosecutions are a noticeable characteristic: “[r]ivals – often internal ones – [...] may be prosecuted for corruption.” (Levitsky & Way, 2010, p. 9). Finally, autocrats have also been found to employ corruption-related judicial processes to increase popular support in the absence of meaningful reforms (Cheung, 2007),<sup>9</sup> or to secure power at the onset of authoritarian

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8. This was the case, for example, in the recent Petrobras scandal in Brazil, where former president Dilma Rouseff suffered much of the loss of support caused by the millions of dollars embezzled from the major state-owned oil company (AP, 2015; The Economist, 2014).

9. However, it is far from clear whether these work as boosts of popular support in China (Jiang & Yang, 2015).

tenure (see Nathan, 2003, for an example in China's case). Although the literatures on prosecution in democracy and under authoritarianism have developed in isolation, there are theoretically relevant parallels. Specifically, the mechanisms analyzed strongly suggest that the relevant motivation is *political* competition, rather than a purely electoral one.

### 2.1.2 *Judicial independence*

The structure of the judicial system, particularly judicial independence has also been closely related to patterns of prosecution. Judicial independence refers to the degree with which judges can isolate themselves from pressures of hearing and deciding cases. Generally speaking, an independent judge is one whose nomination or removal does not rely solely on the executive or a legislative majority.<sup>10</sup> The logic of this is as follows: if a judge's permanence is dependent on a politician, a principal-agent relationship is established. The judge might bias his or her rulings when it comes to cases in which the principal is interested in, or directly involved. When autonomy exists, judges can rule based solely on the evidence bring forth, and decide cases against the interest of political actors without fear of retribution. As Larkins (1996, 606) argues, "[i]t is normally believed that without independence, the judiciary can be easily manipulated to prevent it from questioning the illegal or arbitrary acts of state actors."

Judicial independence has been said to increase the probability of politicians getting caught if corrupt (Huther & Shah, 2000, p. 5), and it is usually taken as a key variable for the success of entire court systems and anticorruption commissions (Heilbrunn, 2004). Empirically, it has been suggested that elected judges tend to be more vigilant when it comes to abuses committed by other offices, than appointed ones who depend on other political actors (Azfar & Nelson Jr, 2007), and that there is overall less corruption (Alt & Lassen, 2008). Recent studies that compare developing democracies also find that when

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10. For a review on the empirical measurements of judicial independence, see Ríos-Figueroa & Staton (2014).

judges are independent they do serve as checks of possible abuses and decrease corruption (Ríos-Figueroa, 2006; Priks, 2011).<sup>11</sup>

Consequently, in places where the judiciary is dependent on the executive, corruption prosecution is almost orthogonal to underlying or suspected corruption. Cases such as Alexei Navalny, a Russian opposition leader sentenced to 5 years on charges of embezzlement<sup>12</sup>, or Venezuelan general Raúl Baduel who received an 8 year sentence for corruption charges after denouncing the Chávez regime<sup>13</sup> illustrate how incumbents in authoritarian regimes need not worry about building a strong case to imprison their rivals. The outcome of prosecution in these cases usually rely on the degree of control that the incumbent has over those in charge of the judiciary, and not on the quality of the evidence presented against the accused. Furthermore, incumbents in authoritarian regimes do not entirely depend on the public's opinion to maintain office, meaning that they are somewhat impervious to discontent of the citizens if they target opponents.

Judicial independence is quite relevant to understand how corruption might or might not trigger prosecution. However, judicial independence paints an incomplete picture as it overlooks the fact that the first player in a judicial corruption case is actually the prosecutor, who initiates an official investigation process and determines the cases that will end up in court. As Ríos-Figueroa (2006) notes, "the prosecutors '[can] become highly critical as the gatekeepers of the judiciary'" (p. 9). This is not trivial because prosecutors can, and often do, depend on the executive power in democracies. Thus, even in the presence of an independent judiciary, a dependent prosecutor can potentially manipulate the judiciary to further political goals (Aaken *et al.* , 2004), at least in the early stages of a judicial process. Such concerns have been empirically corroborated in the United States: prosecu-

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11. The same studies suggest that independent judges themselves become possible bribe-takers, which changes the location of corrupt transactions and might even increase the overall level of corruption.

12. See BBC (2013)

13. See Grant (2010)

torial independence affects the partisan distribution of the cases that prosecutors decide to pursue, as well as overall corruption levels (Gordon, 2009).

## 2.2 Regimes as the big divide, evidence as the limitation

The previous review suggests the existence of two complementary mechanisms by which prosecution comes about. These two mechanisms, one in democracies and one in authoritarian regimes, have been developed by two separate branches of the literature, yet they are quite complementary in their predictions. Both mechanisms showcase the importance of institutions, specifically the structure of the judiciary (whether it is independent or not), and of political competition, in the probability of observing prosecution. Of course, places with electoral competition often enjoy an independent judiciary, whereas places that lack free and fair elections are frequently ruled by an incumbent that controls the judiciary, which means that scholars have often relied on ideal regime types to explain corruption prosecution.

This reliance on ideal regime types has narrowed the study of corruption prosecution in three ways. First, ideal regime types are insufficient in light of the number of countries that currently exhibit hybrid characteristics. Recent literature that has convincingly argued that electoral democracies might exhibit authoritarian characteristics or institutions (Diamond, 2002; Schedler, 2009; Levitsky & Way, 2010), or that courts in authoritarian regimes are much more independent than what the literature has assumed (Ginsburg & Moustafa, 2008).<sup>14</sup> Put differently, even when the predictions of prosecution based on ideal regime types are quite robust—that democracies outperform autocracies when pros-

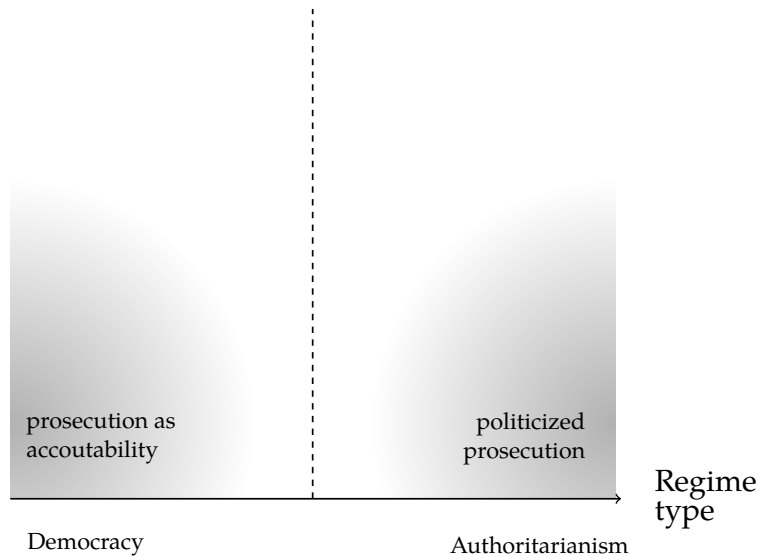
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14. It also seems that the independence given to the judiciary is related to matters of economic issues, such as ruling over property rights. For example, in Franco's Spain, the judiciary was quite independent from the regime, yet cases that revolved around matters of political dissidence were part of a separate set of courts regulated by the military (Toharia, 1974). Nevertheless, the issue of control of the judiciary seems to be an empirical one, and not one to be assumed.

ecuting corruption—it is unclear which institutions would or would not work different under hybrid regimes.

The second consequence of distinguishing prosecution across regime types is illustrated in figure 2.1. Under a democratic regime (left side of the figure), we expect prosecution to be an instance of accountability, because it is the result of oversight and of a fair judicial process conducted by an independent set of courts. Under authoritarianism (right side of the figure), prosecution is politicized, triggered by the desire of the autocrat to control dissidents and enabled by their control of judicial independence. Thus, scholars have equated the empirical phenomenon of prosecutions under democracy to the normative and theoretical construct of accountability. As I will show in chapter 5, assuming that these are equivalent distorts our understanding of accountability, and overstates the benefits of democratization and judicial prosecution in a corruption-ridden environment.

Figure 2.1: Outcomes predicted by the literature



Thirdly, the stark distinction between prosecutions under democracy and autocracy is reflected by the empirical research of prosecution. Empirical studies often rely on analyzing rates of prosecution or conviction of corrupt politicians in a single country, exploiting within-country institutional or political variation (Fisman & Gatti, 2002; Jiang & Xu, 2015, for example). This approach is well-suited to investigate how single variables affect prosecutions on a particular case, but it ultimately reinforces the idea that prosecution operates in fundamentally different ways in democracies and in autocracies.<sup>15</sup> It is important to note, however, that this limitation also partially responds to the difficulty of gathering reliable judicial data that can be compared across regime types.

Finally, relying on rates of prosecution as a way to explain prosecution overlooks those cases that were not brought to justice, something that is empirically and theoretically critical. Empirically, looking into occurrences and non-occurrences avoids inferential fallacies, because relying on aggregate measures is selection on the dependent (we only observe cases that did occur) and one risks falling into ecological fallacies. Furthermore, understanding which cases are not brought to justice is also theoretically important: if we are ultimately interested in theorizing about accountability, impunity can be just as revealing as prosecution.

## 2.3 Conclusion

Current literature sheds some light on the topic of grand corruption prosecution. First, the two mechanisms discussed here suggest that prosecution originates from political competition. Secondly, the literature suggests that the feasibility and effectiveness of prosecution as a way to eliminate challengers is shaped by institutions such as the structure of the judiciary.

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15. It is also important to note that studies that look at prosecution of corruption as the dependent variable often use it as an indicator of corruption itself (Goel & Nelson, 1998; Golden & Chang, 2001; Glaeser & Saks, 2006, for example).

Despite these valuable insights, scholars still lack an overarching theory that convincingly disentangles the effects of institutional variables and competition in prosecution. Furthermore, such theory must explain why do we observe prosecution in some instances and not in others. Theoretically and empirically identifying these effects becomes even more difficult because institutions can simultaneously shape the probability of corruption (Ades & Di Tella, 1997) and the probability of its prosecution. The next chapters develop a theory and test its implications using a research design that addresses the issues discussed here.

## CHAPTER 3

### A MODEL OF PROSECUTION

In the previous chapter I argued that contemporary theories of corruption prosecution rely on ideal regime types, assuming that bundles of institutions operate jointly on idealized regimes to produce accountability or politicized prosecution. These theories identify the existence of electoral competition and of an independent judiciary as key institutions that explain outcomes of accountability. This is a useful theoretical exercise but it has clear empirical limitations: based on this approach, for example, it is unclear what patterns of judicial processes can we expect in places with elections but with an encroached executive that can meddle with the judiciary.

Second, and related, I argued that current literature is often interested in explaining prosecution as an aggregate outcome that varies across countries. This reinforces the idea that democracies are better than authoritarian regimes in holding politicians accountable. Yet focusing on aggregate measures often disregards the process by which some cases are prosecuted and others are not, something that is crucial to theorize about patterns of accountability.

This chapter develops a game theoretical model that directly addresses these shortcomings. Firstly, the model conceptualizes the outcome of interest as the onset of a judicial investigation of a politician. Secondly, the model presented here formalizes the channels by which the institutional structure of the judiciary and the democratic constraints of the Executive affect the outcome of interest. In this way, my analysis disentangles these institutional effects from other relevant variables, like the overall level of corruption or the existence of political competition, that often accompany or are a by-product of such institutions.

I begin this chapter by discussing the menu of options that the executive has to control members of the opposition: he can pay off an elite member to not challenge him, he can intimidate her, or he can initiate an investigation. While discussing these options, I pay

special attention to (1) the mechanisms by which these actions serve to weaken political elites, and (2) the conditions under which prosecution is feasible and effective *vis-à-vis* other options. Section 3.2 presents the formal model, its results, and a discussion of the theoretical concepts represented in the model's parameters. I finalize this chapter by developing one of the main claims of this dissertation: that Executives in democracies prosecute more often than those in authoritarian regimes, but that this can be attributed to their lack of more effective means of getting rid of the competition.

### 3.1 Prosecution as a rational action

I conceptualize of prosecution of elites as a tool that can be used by the Executive to weaken or eliminate politicians in or from the political arena. However, prosecution is not the only available course of action. To simplify, I consider that Executive can use three different types of actions: *prosecution* or the initiation of a judicial process, *intimidation* or the exercise of extra-legal coercion, and *payoffs* or a the offer of a positive inducement. The remainder of this section discusses these three options, focusing on how feasible and effective they are in weakening political opponents.

#### 3.1.1 Prosecution

Most obviously, prosecution directly weakens political elites by imprisonment, but there are other less obvious mechanisms in which prosecution achieves this. For example, some judicial or administrative systems require the limitation of political rights during the investigation or legal process, or as a form of punishment.<sup>1</sup> Prosecution of grand corruption

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1. This is what happened to Anwar Ibrahim, who was jailed for sodomy and corruption in Malaysia. He was later acquitted of sodomy and then the acquittal was overturned (Mullen & Joseph, 2014) However, his corruption charges stood and he was impeded from entering politics until 2008. More generally, some internal affairs agencies are allowed to impose sanctions of administrative nature, suspending politicians from occupying office for a determinate period of time. Suspension of political rights has been studied in the context of transitional countries, particularly when the person suspended was suspected to be part of the totalitarian repressive regime (David, 2004).

can also weaken a political rival through public opinion: if credible, accusations of graft can ‘dirty’ the name of the politician involved, decreasing his popularity. These effects are partly theorized on the literature of electoral punishment as a response to corruption scandals (Ferraz & Finan, 2005; Chang *et al.* , 2010), although this literature focuses mostly on democracies, where the connection between ‘favorable opinion’ and political office is clearly drawn via free and fair elections. Nevertheless, it is important to note that politicians under authoritarianism are not entirely isolated from public opinion: corruption scandals and the judicial processes that these can unravel shape public opinion even in the absence of electoral punishment.<sup>2</sup>

I argue that prosecution is a feasible course of action, but its effectiveness as a tool to eliminate competition varies. Prosecution is feasible because the Executive can control the onset of a judicial process by delegating the investigation of a rival to his prosecutor. Empirically, prosecutors are part of the executive offices across a number of countries, and they are the ones that perform the investigative tasks of the judicial system. Even in countries with independent anticorruption commissions, prosecutors can often investigate and try grand corruption as a criminal case.<sup>3</sup>

Despite its feasibility, its effectiveness is [potentially] mediated by three factors that were briefly mentioned in chapter 2: the independence of the judiciary, the amount of graft or corruption committed by the politician that is being targeted, and the public response. For example, an independent judiciary that decides culpability based on evidence of wrongdoing will not convict someone who has not engaged in wrongdoing, but pros-

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2. This is exemplified with the arrest and trial of Bo Xilai in China, a popular politician sentenced to life on charges of embezzlement, bribery, and corruption, whose process was understood as a way to “bury Mr. Bo’s political career and diminish lingering support for him within the party *and among the general public*” (Wong, 2012, emphasis added).

3. This dissertation focuses on judicial investigations and processes that can be initiated by the Executive. This decision serves as an empirical limitation of this argument rather than a misrepresentation of reality: the theory and formal model developed here better reflect the observed outcomes of jurisdictions where the investigative and prosecutorial arm of the state is politically dependent on the Executive, and where the relationship between the Executive and the prosecutors has little problems derived from principal-agent relations.

ecuting a corrupt politician can be an effective way to eliminate him from the political arena. Under a judiciary that is politically dependent of the executive, prosecution might be an effective way to eliminate competition *regardless* of whether the target engaged in corruption.

In addition, prosecution might be ineffective and can even hinder the executive because of its public nature. After all, keeping a prosecution quiet is almost impossible. In some cases, the framing of the judicial process as either necessary, lawful, or legitimate might not be credible, and instead perceived as politically motivated. Therefore, a prosecution can be unsuccessful in its goal of eliminating or weakening a rival, either because of the judicial process itself, because of public fallout surrounding it, or because voters simply do not care.<sup>4</sup>

The idea of prosecution as an instrument that can weaken rivals most clearly builds on the literature on authoritarian use of the judiciary (see section 2.2). However, I depart from the idea that the Executive's motivations are different across regimes types, and instead propose that prosecution in democracies can also be instrumental. Secondly, by arguing that prosecution is available but not always effective in eliminating competition, I separate the ability of initiating an investigation from controlling how will such investigation conclude.

### 3.1.2 *Intimidation*

The second action available to the Executive is intimidation, or the use of coercive and extra-legal force. These are violent, repressive and/or coercive actions directed at political elites, forcing them to behave in a certain way. Such actions can be exerted by members of coercive state apparatus (police or army) or by hired hitmen. Crucial to my definition, however, is that these intimidatory actions are always conducted outside of the

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4. See subsection 2.1.1 for a discussion on the factors that decrease the effectiveness of prosecution.

legal framework.<sup>5</sup> This last detail is fundamental: a considerable amount of the literature has recorded instances of intimidation but, as the next anecdote shows, the illegal use of coercion (intimidation) and legal use (prosecution) are used interchangeably:

[T]he [Kazakhstani] regime has used its coercive apparatus, including the courts, security forces, and non-uniformed thugs to harass, intimidate, or eliminate opposition candidates seeking public office. Examples of this kind of activity have included the mysterious disappearance of Khasen Kozha-Akhmet's list of signatures that disqualified him from participation in the 1991 presidential elections, former Prime Minister Akezhan Kazehegeldin's conviction for "participating in an unsanctioned election rally" that eliminated his presidential candidacy in 1999 (Olcott 2002, 119), and Zhamanbek Nurkadilov's death in 2005. Nurkadilov, a former mayor of Almaty and close ally of the president, had defected to the opposition in the run-up to the 2005 elections. He was later found dead in his apartment from what the Interior Ministry declared a suicide. This was a dubious claim indeed, considering he had been shot three times, including twice in the head (Kusainov 2005; Kennedy 2006, p. 51).<sup>6</sup>

As this quote illustrates, events such as a conviction or an alleged covered-up murder often fall under the umbrella concept of coercive force of the state, obscuring the distinction between legal and illegal coercive force. This distinction is relevant for this particular project because is ultimately interested in the occurrence of prosecution. In addition, there is a substantive reason to think of these as separate phenomena: regimes that incarcerate opponents are different than regimes that kill them (or threaten to kill them).

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5. One of the most fruitful avenues of research of authoritarian regimes is the architecture of their coercive apparatus (Slater, 2010; Greitens, 2016) and the centrality it plays in maintaining regime stability (Levitsky & Way, 2010, 57). However, this literature focuses mainly on understanding the determinants of coercive capacity to target dissidents in the population (and not in the elites specifically), as opposed to exercising coercion at large.

6. From Hess (2013, 174).

Disentangling the reasoning between these two courses of actions is necessary to enable theorization of the occurrence of these two.

Contrary to prosecution, I argue that intimidation is highly effective when available: if the executive can beat or kill members of the opposition and get away with doing it, the mere threat can curb most competitors.<sup>7</sup> Intimidation, understood as the extra-legal use of coercion by the Executive, is best embodied in what (Slater, 2003) calls ‘high personalized despotic power in autocracies:’ the extent to which an autocrat’s power to decide is concentrated, regardless of whether he can rely on formal institutions to implement such decisions.<sup>8</sup> Following this, I argue that intimidation is feasible when an autocrat can make decisions and implement them without a necessary approval or endorsement from other actors in power. In other words, intimidation is a core authoritarian feature, attainable only when the executive cannot be held accountable by either other branches of government or the population.<sup>9</sup>

### 3.1.3 *Payoffs*

Finally, the Executive can also rely on rewards or positive inducements to induce a rival to leave the competition. The use of these positive rewards, or distribution of spoils to entice elite cooperation is well acknowledged and theorized in the literature under authoritarianism (Gandhi & Lust-Okar, 2009), but I find anecdotal evidence of similar dynamics in places with free and fair elections. For example, a Los Angeles county sheriff denounced that one of his challengers had offered him “a country car, a county driver, and other

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7. In a remarkably insightful paper, Stern & Hassid (2012) argue that the limits between acceptable and unacceptable behavior are rarely clarified or enforced by authoritarian regime. Rather, the authoritarian control of politically active civilians occurs most frequently through self-censorship, facilitated by what the authors call ‘control parables:’ stories that clarify the boundaries of opposition and the possible consequences of transgression.

8. Mann’s definition of despotic power is “the range of actions which the elite is empowered to undertake without routine, institutionalised negotiation with civil society” (Mann, 1984, p. 188). Under this definition, legal prosecution can also be exercise of despotic power.

9. Another way to think of intimidation is as the lack of horizontal constraints in a polity. See Slater (2013) for a discussion on horizontal constraints and democracy.

perks” to quit the race. Furthermore, the challenger in question did not deny the accusation and reported that he was trying to offer the sheriff a “soft landing” (Daunt, 1998). Of course, these payoffs can be much more meaningful than a car or a driver. Executives or party leaders attempt to also offer positions in the cabinet or in the party bureaucracy as a way to minimize or mitigate conflict.

These payoffs are not always feasible nor effective. On the one hand, payoffs should be enticing enough to discourage politicians from competing with the ruler or executive. In other words, the competitor must be as least as well-off taking the reward than challenging the Executive. If the payoff is attractive, offering it can be quite effective, especially if is accompanied by the threat of the use of force should the competitor fail to withdraw from a competition. This type of deals, often referred to as *plata o plomo* (silver or lead) deal,<sup>10</sup> can achieve its goal quite easily: competitors are often better off accepting a small reward for sure than risk suffering the consequences of challenging the executive.

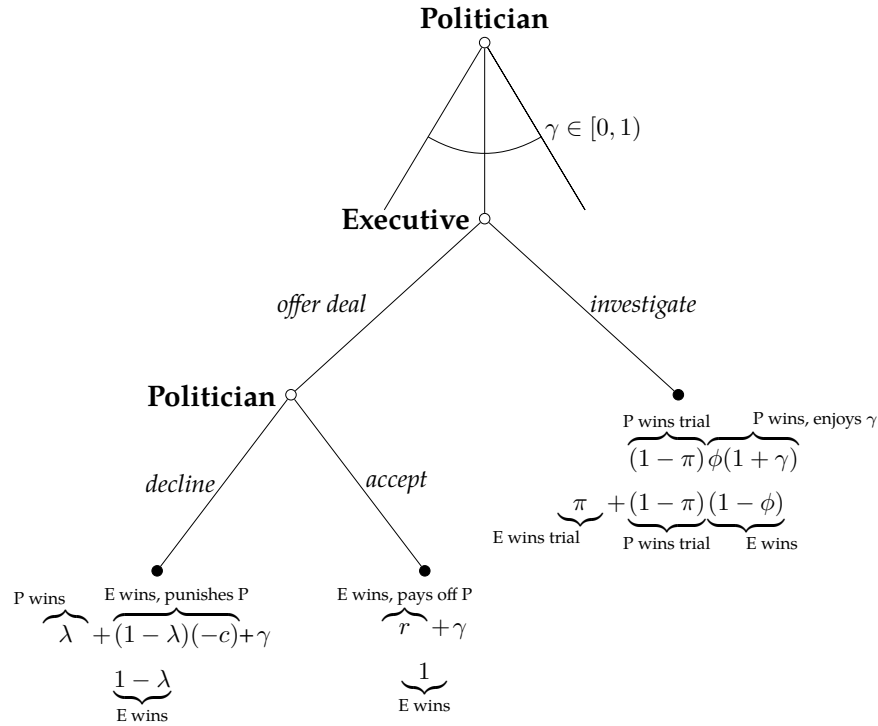
### 3.2 A theory of political prosecution

With this in mind, I propose an extended formal model, represented in figure 3.1, that consists of two actors: an **Politician** that is part of the ruling elite, and an **Executive**. The model depicts the interaction between both of these actors, who are competing for a scarce good or resource that will give the winner one unit of utility. Most obviously, this scarce resource can be thought of as office, but this need not be the case: political rivalries come in many shapes and forms, and not only in the form of electoral competition for a seat. By keeping the nature of the competition intentionally general, the model will describe a broader class of interactions between political elites, not simply the ones where one incumbent and a challenger come into conflict for a single political office.

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10. See (Dal Bó *et al.* , 2006) for a theory of these type of deals between criminal groups and government officials, and the consequences that these have for corruption and quality of politicians.

Figure 3.1: General model of prosecution



In the first stage of the game, the **Politician** decides to steal some quantity  $\gamma \in [0, 1]$ . This stands for the overall amount of graft or corruption that the Politician engages in. The **Executive** observes this quantity  $\gamma$  and decides whether to offer a deal (*offer deal*) so that the Politician will withdraw from competition, or to initiate a judicial process by investigating the Politician (*investigate*). The deal that the Executive offers is for the Politician to take some some payoff  $r \in (0, 1)$ , or suffer the consequences and pay  $c \in (0, 1)$ .<sup>11</sup>

11. Trivially, the Executive could offer a deal where  $r$  and/or  $c$  are equal to zero. Assuming  $c^* > 0$ , this would be a situation where the incumbent simply faces elections.

When a deal is offered, the Politician can accept it (*accept*) and enjoy the payoff and the money taken ( $\gamma + r$ ) for sure. In this case, the Executive will enjoy one unit of utility from winning the competition. If the Politician instead decides to refuse the deal (*decline*), competition will continue. In this case, the politician will win the unit of utility with probability  $\lambda$ . If he loses ( $1 - \lambda$ ), the Executive will fulfill his intimidatory threat, which will cost  $c$ . In addition, the Politician will get to keep the amount  $\gamma$ . The Executive will win the unit of utility with probability  $1 - \lambda$ .

Following the discussion above (section 3.1.1), I model prosecution as an action that can be initiated by the Executive investigation, but whose outcome he does not necessarily control. If he decides to prosecute, the judicial process or trial might eliminate the Politician with some probability  $\pi$ , and the executive will win. With probability  $1 - \pi$ , the process will not eliminate the Politician and competition will continue. If the Politician wins the competition (with probability  $\phi$ ), he gets to enjoy the unit of utility and  $\gamma$ .<sup>12</sup>

The model developed here is a complete information game, meaning that both players know each others actions and payoffs. This can be an unusual choice, especially because one would expect corruption to be hidden. However, I consider this an appropriate choice because this model's primary interest is to theorize judicial processes, and not corruption. So, even when these two are related, their relationship is only relevant for this project insofar as corruption is known to the Executive and he or she can utilize it strategically to weaken his opponent.

### 3.2.1 *Parameters, concepts, and outcome of interest*

Before presenting the solution of the model, I discuss the theoretical interpretations of the parameters. Table 3.1 summarizes the conceptualization, starting with parameter  $c$ . This parameter indicates the unilateral costs that the incumbent can impose on the Politician

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12. This model thus assumes that the only way in which Executives can take away the Politicians' graft money ( $\gamma$ ) is through prosecution.

if he or she declines any deal offered, and instead continues to challenge the Executive. I argue that  $c$  is crucial to the discussion that opened this chapter, because it captures the Executive's capacity to intimidate opponents using extra-legal force. As I argued, this is quintessential to an authoritarian Executive, understood as a political actor who lacks horizontal constraints to their power. Put differently, I argue that Executives that can behave like despots, will be able to impose higher costs, or higher  $c$ . Therefore, I argue that this parameter captures regime type understood as the existence or not of meaningful limits to the coercive capacity of the executive.

Table 3.1: Conceptualization of parameters

Parameter	Construct	Conceptualization
$c \in [0, 1]$	Regime type	Unconstrained despotic power (low: democracy, high: authoritarianism)
$\pi \in [0, 1]$	Chances that trial will eliminate Politician	Function of underlying corruption ( $\gamma$ ) and control of the executive over the judiciary ( $q$ ), such that: $\pi = \gamma + q - \gamma q$
$q \in (0, 1)$	Judicial dependence	Control of the Executive over the judiciary (low: less control, high: more control)
$\gamma \in (0, 1)$	Underlying corruption	Amount of underlying corruption for which the Politician can be investigated.
$r \in [0, \lambda]^{13}$	Payoffs	Incentives offered to Politician to withdraw from the competition
$\lambda \in (0, 1)$	Chances of victory when not investigated	Likelihood that the Politician will win the unit of utility given that he has not been investigated. Conversely, $(1 - \lambda)$ is the likelihood that the Executive will win given that the Politician has not been investigated.
$\phi \in (0, 1)$	Chances of victory when Politician has been investigated	Likelihood that the Politician will win the unit of utility given that an investigation against him was opened. Conversely, $(1 - \phi)$ is the likelihood that the Executive will win given that the Politician has not been investigated.

Parameter  $\pi$  indicates the probability of eliminating the Politician through a trial. I further argue that such probability is a function of the underlying corruption ( $\gamma$ ) and the independence of the judiciary, which I indicate with parameter  $q$ . Specifically, I posit that:

$$\pi = \gamma + q - \gamma q$$

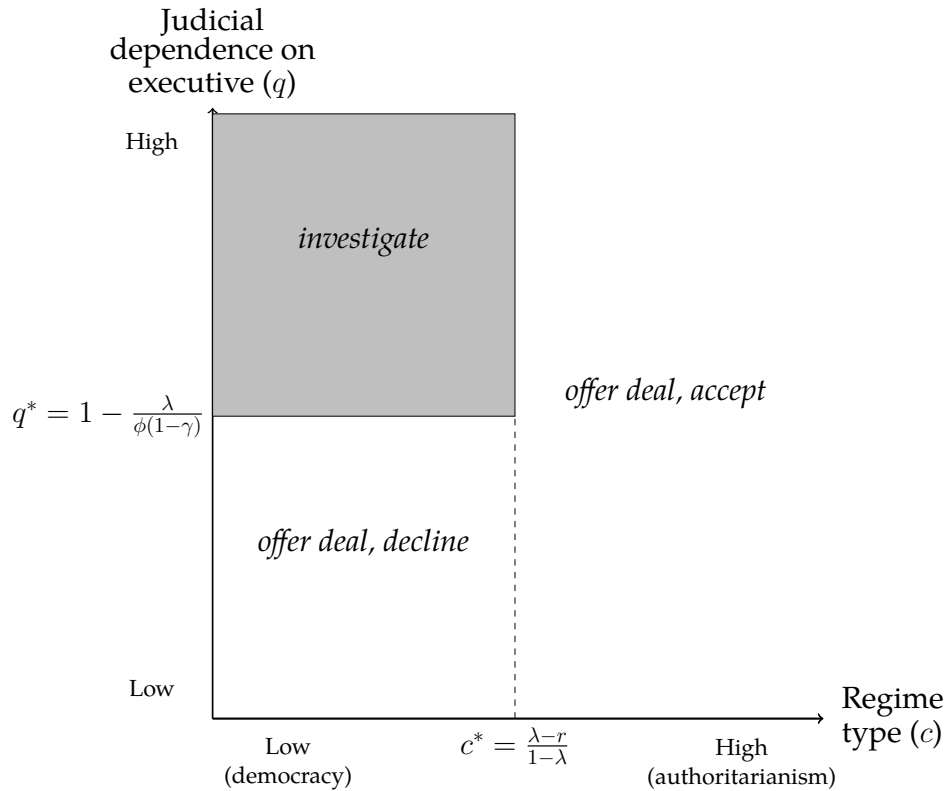
When  $q = 0$ , the judiciary is independent from the Executive, and in this instance the probability that a trial will end in the elimination of the Politician is equal to  $\gamma$ , or the underlying amount of corruption. When  $q = 1$ , the Executive can eliminate the Rival *regardless* of the amount of underlying corruption. See the Appendix for a discussion on this, and for a formalization of the model.

Finally, I discuss parameters  $r$ ,  $\lambda$ , and  $\phi$ . Parameter  $r$  maps quite clearly into the previous discussion, as it represents a payoff offered by the Executive with the purpose of eliminating competition with the Politician. Parameters  $\lambda$  and  $\phi$  stand for the Politician's chances to win that unit of utility if no investigation is opened against him, and if an investigation is opened against him respectively. These chances are different under these two scenarios to account for the possibility that the Executive's actions will shape his or her chances of winning ( $1 - \lambda$  and  $1 - \phi$ , respectively)

### 3.2.2 *Outcome of interest*

For reasons of space, I relegate the solution, equilibria, and proofs to the Appendix, and I focus here on explaining the outcome of investigation. Figure A.2 shows the expected actions of the Executive based on different values of the relevant parameters. The figure's axes are two institutional variables of interest: regime type (parameter  $c$ ) on the horizontal axis and judicial dependence ( $q$ ) on the vertical axis.

Figure 3.2: Expected outcomes



The figure labels the three different outcomes of interest. Firstly, the area on the right of the figure shows an Executive that offers a deal, and a Politician that accepts it. The second area, at the bottom of the left of the figure, shows a deal that is offered and declined, Thirdly, the shaded area at the top left shows an Executive that initiates a judicial process. It is the latter the one the one that we are most interested in.

I begin the analysis by noting that when the coercive despotic power is large enough ( $c \geq c^*$ ), the Executive will always offer a deal which will be accepted and prosecution should not be observed. I propose a straightforward interpretation behind this result that follows from the discussion above: the capacity to intimidate is not always available, but when it is, it is quite effective. Politicians that can intimidate opponents with extra-legal threats will prefer to do this instead of the prosecutorial process both because it is quieter

and provides less opportunity for backlash from the public opinion. In addition, authoritarian executives need not rely on a process that might fail to place the politicians in jail. Thus, we expect leaders in authoritarian places to rely less on prosecution and more on intimidation. From this, we can state the next implication:

**Implication 1:** Holding the rest constant, an authoritarian executive will initiate investigations less frequently than executives in democracies.

When the Executive cannot intimidate, he will initiate a legal process when his control of the judiciary is larger than some critical value ( $q \geq q^*$ ). This illustrates the strategic use of the judiciary under democracy: if the executive cannot intimidate his competition into withdrawing from the race, but he can manipulate in some way or other the outcome of the trial, he might be better off initiating an investigation. But if he cannot manipulate it, he might be better offering a deal knowing that it will be rejected than opening an investigation. From this, I propose the next implication:

**Implication 2:** Holding everything constant, Executives in democracies that control a strong judiciary prosecute more often than Executives in democracies that exert less control over the judiciary.

Whereas parameters  $c$  and  $q$  determine whether the scenario falls in or out of the shaded area, a change in the remaining parameters increase or decrease the area of interest. From figure 3.2 we can see that we will observe prosecution with a higher probability if the area of prosecution (shaded) increases. Thus, this analysis considers the next operationalization of the outcome of interest:

$$Pr(inv) = c^*(1 - q^*)$$

Simplified:

$$Pr(inv) = \left(\frac{\lambda - r}{1 - \lambda}\right) \left(\frac{\lambda}{\phi} \cdot \frac{1}{1 - \gamma}\right)$$

From this formula, we can see that as the payoffs increase ( $r$ ), the area of prosecution decreases.<sup>14</sup> The rationale here is as follows: if the Executive cannot offer a convincing deal, he might be better off using the legal apparatus to hinder the chance of the challenger winning the election rather than expecting the challenger to ‘settle for peanuts.’ Therefore, I propose:

**Implication 3:** Holding the rest constant, an increase in the payoffs offered by the Executive decreases the probability of observing prosecution.

The effect of underlying corruption, or  $\gamma$  is complex. From the formula, we can see that an increase in  $\gamma$  increases the area of prosecution.<sup>15</sup> However, the effect occurs only by increasing the height of the area, not the base. Hence, all else equal, an increase in gamma should increase the probability of prosecution *only* when  $c < c^*$ . Thus I propose the next implication:

**Implication 4:** Holding the rest constant, an increase in the underlying corruption increases the probability that a democratic Executive will initiate a judicial investigation.

Finally, the chances of winning ( $\lambda$  and  $\phi$ ) do not have a unidirectional effect on the probability of observing prosecution. This is so because their effect depend, firstly, on

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14. See subsection A.3.1 of the Appendix for a derivation of this comparative static.

15. See Appendix, subsection A.3.4.

which one is larger and secondly, on the relationship between  $\lambda$  and  $1 - \lambda$ .<sup>16</sup> Thus, there is no straightforward comparative static on the chances of winning:

**Implication 5:** Holding the rest constant, an increase (decrease) in competitiveness of the Politician (Executive) does not have a straightforward effect on the probability of prosecution.

### 3.2.3 *Graft as equilibria*

Although the main interest of this dissertation is the occurrence of prosecution, I discuss the model's results on corruption and impunity. Firstly, and most importantly, the model finds that under authoritarianism, graft will be maximized because elite control is exerted primarily through intimidation and not through prosecution. This result illustrates the self-enforcing balance between elite cooperation and corruption in authoritarian regimes. The model finds that in these cases, the Politician will steal as much as he can because the fear of intimidation will anyway curb his desire to challenge the Executive.

The model also shows that, in democracies, investigations should occur frequently but graft levels ( $\gamma$ ) should be low. This result partially supports the empirical finding that consolidated democracies present overall levels of corruption that are lower than those observed under authoritarianism and under recently transitioned democracies (Treisman, 2000; Montinola & Jackman, 2002). In other words, Politicians who steal a lot knowing that they will be investigated should [almost] never an equilibrium.<sup>17</sup>

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16. See subsections A.3.2 and A.3.3 of the Appendix for proof.

17. Specifically, stealing a lot and being investigated only occurs when the Politician can capitalize the prosecution in his favor. Two examples of capitalization of corruption and its prosecution are (1) charismatic politicians that frame prosecution as political persecution, and (2) politicians who use part of the resources or money grafted to buy support via clientelism or electoral fraud. This result is developed at length in the Appendix, specially section A.2.1.

### 3.3 From the model to a comparative theory

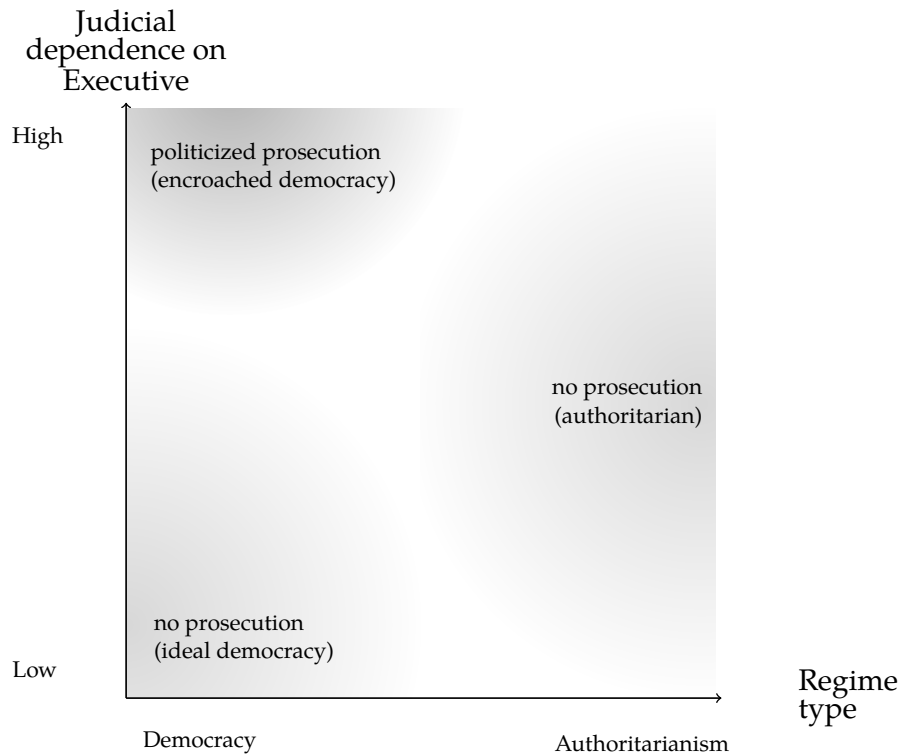
I finalize this chapter by exploring how the model's findings relate to the existing literature on corruption prosecution. To explain this, I rely on figure 3.3 shown below. The horizontal axis of this figure is regime type, the same used to describe the predictions in the literature (plot 3.2 in chapter 2). However, the plot below also adds a vertical axis showing the degree to which the judiciary is controlled by the executive.

The clouds in this figure represent ideal regime types: strong authoritarian regimes are in the top-left corner and institutionalized democracies are in the bottom-right. However, the addition of the vertical dimension (the control of the judiciary by the executive) improves the theoretical relationship between prosecution and regime type. By adding this vertical dimension, the theory developed in this chapter identifies a particular type of dysfunctional democracy: one that is labeled 'encroached democracy,' and whose theoretical importance will be developed below.

The results of the formal model are elements in an encompassing theory of prosecution of political elites by regime type. In strong authoritarian regimes, the Executive can exercise coercive power in an extra-legal way through intimidation, which makes prosecution unlikely to be used in these settings. Authoritarian leaders can coerce through jailing, so they do not have to rely on courts as much, even if they control judges and the rest of the coercive apparatus. This finding departs from the prevalent notion that authoritarians most frequently use prosecution with political purposes. The model developed here predicts that it is precisely in these regimes that we should not observe prosecution as a way to eliminate opponents: authoritarian executives might or might not have the capacity to jail their opponents, but they do not need to.

According to the literature, investigations and judicial processes should be more frequently observed in democratic regimes, located on the left side of the plot. This prediction is generally consistent with the formal model. However, the model departs from the literature's claim that the higher rates of corruption prosecution are due to better oversight

Figure 3.3: Regime characteristics



of those in power. Instead, I propose that judicial processes in democracies are more likely to occur because Executives are constrained on their use of extra-legal coercion.

This distinction between what brings about prosecution in democracies is fundamental. Empirically, the mechanism I propose sheds light not only on the frequency of corruption prosecution, but in the underlying characteristics of the cases that we observe being investigated. For example, as implication 4 shows, underlying corruption increases the probability of observing prosecution. However, when elites can be paid off by an Executive they are not as likely to be prosecuted, even holding levels of graft constant (as described in implication 3). In addition, prosecution also increases when courts are an effective way of eliminating rivals regardless of the underlying corruption (implication 2).

This last point is also related to the notion of ‘encroached democracy.’ The figure shows that encroached democracies are those in which the executive is constrained in his use of intimidatory tactics, but where he or she can pay off competitors or manipulate the judiciary as a way to maintain power. This distinction between types of democracies is crucial to understand variation on investigation and prosecution: the theory set forth here shows that institutionalized democracies observe fewer processes whereas encroached democracies observe more. This variation, however, can be attributed to the desire of the Executive to eliminate opposition, and not as a strategy of the Executive to eliminate corruption or graft.

### 3.4 Conclusion

This chapter develops a formal model that conceptualized prosecution as part of the menu of options available to the Executive to control or weaken opposition. I find that democracies indeed prosecute more often than authoritarian regimes. Contrary to existing research, they do so because democratic executives lack effective ways to keep politicians and members of the elite in line. Whereas autocrats can convincingly threaten with intimidation, democratic leaders cannot, so they must rely instead on prosecution. An implication of this result is that prosecution as a way to deter competition is less likely to be observed in authoritarian regimes than in democracies.

Of course, the mechanisms laid out in this chapter are not the only one that brings corruption about. Politicians might willingly submit themselves to a judicial process to clear their names, or prosecutors could be ambitious politicians interested in getting a good conviction record. However, the mechanism identified here better explains prosecution, or the lack of it, in places where prosecutors rely on the executive.

The model proposed here is theoretically useful in two ways. Firstly, it conceptualizes the outcome of interest as the probability of observing prosecution, thus allowing us to test determinants of prosecution at the individual level. Second, it explains this outcome as

a function of specific institutions (regime type and judicial dependence) while assuming that the motivations of the ruling politicians are indistinguishable across regime type. In this way, the model can better explain under which conditions are judicial processes feasible and effective, providing a consistent theory of prosecution across regime types.

## CHAPTER 4

### CONTROLLING MEXICAN GOVERNORS

This chapter develops an empirical analysis the theory developed in chapter 3. On chapter 2, I argued that scholarly approaches to corruption prosecution have mostly relied on rates of prosecution within a country. This approach risks falling into an ecological fallacy, and over-explaining corruption prosecution while providing virtually no insight into why are some cases prosecuted whereas others are not. Furthermore, existing approaches cannot compare prosecutions across regime types, and fail to account for the possible endogeneity between institutions and underlying corruption.

The empirical approach presented here tackles these issues with a innovative research design. I test the theoretical implications using a unique dataset of all outgoing Mexican governors from 1990 to 2016, where the dependent variable of interest is the existence or not of a judicial investigations targeting them. By coding instances of occurrence of investigations and non-occurrences among members of the political elite (governors), my approach avoids selecting on the dependent and falling into ecological fallacies. In addition, the last 25 years in Mexico have witnessed enormous changes in the political and institutional landscape. This means that the dataset captures temporal and geographic variation of institutions that, I argue, map unto the parameters of interest. In this way, I am able to present an analysis of prosecution of elite members (governors) across regime types.

This chapter proceeds as follows. I begin with with an introduction of governors as members of the elite, explaining why are they prime actors to study corruption prosecution. Section 4.2 explains the dataset and the operationalization of the parameters of interest. It also provides a series of hypotheses derived from the implications developed in the last chapter. Section 4.3 reports the results of the statistical models under a variety of specifications.

## 4.1 Governors as elites

For the most part of the 20<sup>th</sup> century, Mexico was a strong single-party regime in which the presidential office concentrated an almost absolute power,<sup>1</sup> and where the ruling PRI<sup>2</sup> party dominated offices at the national and local level. The opposition had slowly begun to win seats in local legislatures, and in 1986, Ernesto Ruffo Appel from PAN<sup>3</sup> won the Baja California governorship, becoming the first opposition candidate to win local executive elections. In the decade of the 1990s a series of institutional reforms slowly paved the way for the national-level erosion of the ruling party. In 1994 the federal judiciary was extirpated from the presidency, and in 1996 a reform gave full independence to the Electoral Commission (*Instituto Federal Electoral* or IFE). In this way, the presidential office diluted its power and opened up spaces in the political arena.

The erosion of the strong presidential single party regime was also partly accomplished by a series of decentralization reforms. These reforms empowered state actors by giving them more discretion on the way they use fiscal and administrative resources (Falleti, 2005). In 2000, the PRI lost the [severely weakened] presidential office, which further increased the role of governors in national politics (Hernández-Rodríguez, 2003, p. 213). In this context, governors have become fundamental players to understand the Mexican political landscape.<sup>4</sup> An example of the control that governors can exert is developed at length by Langston (2010), who argues that even federal legislators have become agents of the governors. This relationship is created and fueled by a context of no consecutive legislative reelection, where governors decide future political posts and candidate nominations.

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1. The strict no reelection rule made it possible to centralize political power in an office but not in a person.

2. *Partido Revolucionario Institucional*

3. *Partido Acción Nacional*

4. "The governor controls its local congress, controls its transparency institute, controls its human human rights commission, controls his electoral institution: controls everything." (Macario Schettino quoted in Meza, 2009). Governors have been called *los nuevos virreyes* (Zuckermann, 2003), or "the new viceroys," representatives of the Spanish crown during the colonial period.

Mexican governors are ideal cases to test the theory. Since there is no reelection for governors in Mexico, they must leave office once their term has concluded. After that, their political career largely depends on how can they leverage the resources amassed during office. During their tenure in office, they control pork, clientelistic networks, legislators, and state institutions. It is reasonable to expect exiting governors to maximize their control over the capital amassed during their government. Incoming governors, however, are sworn in office with little more than the formal control of the state's executive office: in a counterintuitive way they must compete with the outgoing governors for the resources that can secure a political future in a different office. Thus, the concept of the executive's attempt to weaken or eliminate politicians is translated here as the struggle of the **incoming** governor and **outgoing** governor for the state political resources. Once the executives leave power, they can become possible targets of a judicial investigation.

In addition, the analysis here includes governors from 1990-2016, a period that encompasses the introduction of important variation at the state level. The electoral reforms have modified the structure of political and electoral competition, but such modifications have been slow and geographically uneven. As a result, although the strong PRI regime was overturned at the federal level in the 2000 elections, some states in Mexico have yet to hold fully contested and clean elections with alternation or meaningful horizontal checks on abuses of power (Giraudy, 2010). Put differently, some of the governors coded here are, effectively, authoritarian leaders in an authoritarian states. The existence of these authoritarian subnational regions (Gibson, 2013) proves to be incredibly advantageous to test the implications of the model.

Finally, governors are also ideal to test the implications of the formal model because the structure of the prosecutorial office is very similar across states in Mexico. Prosecutors (*procuradores estatales*) are part of the executive's cabinet, and they enjoy considerable freedom to choose which cases to investigate, and how to investigate them.<sup>5</sup> This raises

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5. The role of state's attorneys when prosecuting corruption is by no means straightforward. For example, authorities are duty-bound to prosecute corruption (*de oficio*). However, prosecutors decide how many

the issue of strategic prosecution: could prosecutors be strategically choosing cases knowing that they will win? Two reasons make me think that this is not the case. First, their dependence on the executive suggests a subordination to him or her rather than a desire to put criminals behind bars. Second, if they were strategically choosing cases, the rate of convictions to investigations would be considerable. Yet, the data shows that only a handful of cases have actually ended up with an arrest, as investigations move slowly in the judicial system, are moved to a different level of government (or even taken up by foreign agencies), or are simply abandoned by the prosecution.

## 4.2 Operationalization and empirical implications

In order to test the implications of the model, I gathered data on 181 governors, starting with those that were in power in 1990, going through to those who had left office by June 2016. Of the total number of cases, 17 were designated as interim governors and 23 were substitute governors.<sup>6</sup> In order to avoid potential confounders, I removed from the data all governors (investigated and investigating) that had not been elected. I present here the results performed on the remaining 101 cases, although the same analysis conducted in the full sample is reported in section B.9 of the Appendix.

In accordance with the theoretical model, the outcome of interest is the probability of investigation of the **Politician**. Table 4.1 shows a summary of the operationalization, and the remainder of this section will discuss the operationalizations and will formalize the empirical implications.

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resources to allocate local legislatures, and set the information threshold necessary to open an investigation. Similarly, actors such as legislatures or members of the civil society can request an investigation, but it is the state prosecutor who conducts it.

6. See table B.1 in the Appendix for a description of these cases.

Table 4.1: Operationalization of parameters

Parameter	Concept	Variable and operationalization
$Pr(inv)$	Outcome: Probability of investigation	<i>official_investigation</i> : 1 if governor $g_{s,t}$ has been the center of an official investigation at the state level, 0 otherwise.
		<i>alternation</i> : 1 if governor $g_{s,t+1}$ governs after alternation, 0 otherwise.
$c$	Regime type	<i>fraction</i> : Fraction of state congress that is from the same party as governor $g_{s,t+1}$ .
		<i>fraction_over_50</i> : 1 if <i>fraction</i> is larger than $\frac{1}{2}$ , 0 otherwise.
		<i>fraction_over_66</i> : 1 if <i>fraction</i> is larger than $\frac{2}{3}$ , 0 otherwise.
$q$	Judicial structure	<i>judicial_control</i> : 1 if governor $g_{s,t+1}$ can interfere with the judicial structure, 0 otherwise.
$r$	Payoffs	<i>co-partisanship</i> : Co-partisanship between investigated and investigating governor.
$\gamma$	Underlying corruption	<i>corruption</i> Count of articles covering corruption-related news of governor $g_{s,t}$ plus one, logged.
$\lambda \ \& \ \phi$	Chances of victory	<i>log(margin)</i> : Margin of victory of governor $g_{s,t}$ , logged.

#### 4.2.1 Outcome: Judicial investigations

I begin with the outcome of interest, which is the probability of observing investigation. This is empirically measured with a dichotomous variable coded 1 if the outgoing governor was officially investigated by the incoming governor or corruption-related crimes that occurred during his terms. I refer to the outgoing governor also as the *investigated* governor (notation:  $g_{s,t}$  for governor  $g$  of state  $s$  at time  $t$ ), and to the incoming governor as the *investigating* governor (notation:  $g_{s,t+1}$ ). Thus the outcome of interest is  $Pr(inv_{g_{s,t}})$

In the sample of pairwise elected governors, 21 had been investigated.<sup>7</sup> I briefly sketch two cases for the purposes of illustrating the type of accusations leveled against governors.<sup>8</sup> The first case involves Rafael Corrales Ayala, a PRI politician who governed Guajuato from 1985 to 1991. In 1994, an arrest warrant was issued against him for fraud related to a public work conducted during his administration, and it was later revealed that this was due to possible price inflation in the construction of penitentiaries (*Ceresos*) and public auditoriums.<sup>9</sup> A second, more recent, case, involves PAN politician Guillermo Padrés Elías who governed the state of Sonora from 2009 to 2015. In December of 2015, a veterinarian was arrested carrying 3.5 million pesos (around 190 thousand dollars) claiming to work for the former governor and his brother. The veterinarian was unable to explain where the money came from<sup>10</sup> and an investigation of Padrés Elías commenced.<sup>11</sup>

#### 4.2.2 *Regime type*

Parameter  $c$  measures one of the most important concepts of the theory: regime type. In section 3.2.1, I argued that  $c$  increases if the executive operates with no checks on abuses of authority, a key feature of authoritarian regimes. Given the importance of this parameter, I present a variety of operationalizations. Firstly, I propose the variable *alternation* that takes the value of 0 if governor  $g_{s,t+1}$  operates in a state where there has been no change in the ruling party, and 1 if alternation has occurred. This operationalization follows the long-standing tradition in comparative politics of coding democratic competition as alternation (Alvarez *et al.*, 1996). The logic behind this is that democratic free and fair elections provide a check on the abuses on power. If voters can credibly hold politicians accountable

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7. In the full sample, that number increases to 30.

8. A detailed description of the sources and coding of this dependent variable can be referenced in section 4.2 of the Appendix.

9. See Proceso (1994).

10. This was reported by Sanchez Dorame (2015).

11. Padrés Elías is also being investigated by the federal prosecutor's office (*Procuraduría General de la República*) for corruption and money laundering.

for their actions, those politicians will be constrained in their exercise of power (Ferejohn, 1999). With this operationalization in mind, I translate implication 1 of the formal model:

**Hypothesis 1.1:** All else equal, prosecution is more likely to be observed after alternation than before alternation, regardless of the underlying amount of corruption.

Alternation is one of the most common measures of regime type, but it is not the only one. Scholars have argued that elections can serve purposes other than holding politicians accountable (Manin *et al.*, 1999; Fearon, 1999), which limits the effectiveness of elections as accountability mechanisms. Hence, I also offer a second measure that captures democratic limits to despotic rule established by the separation of powers. For each investigating governor  $g_{s,t+1}$  I identified the local legislatures that were associated with him, and calculated the fraction of deputies that were their co-partisans. I argue that a higher fraction reflects lower constraints on the executives, or higher levels of  $c$ . This variable, *fraction*, captures the limits that the partisan opposition places on the executive's action: it captures the horizontal accountability dimension of democracy. When two legislatures were associated with a governor, the average is reported and coded in variable.

**Hypothesis 1.2:** All else equal, prosecution is more likely to be observed when the fraction of the legislative that is from the same party as the Executive is lower.

In addition, it could be that the distinction between a democracy and an authoritarian regime is discontinuous. Specifically, I propose two dichotomous variables based on *fraction*. The first one, *fraction\_over\_50*, takes the value of 1 if the investigating governor's legislature is co-partisan in over 50%, and the second one, *fraction\_over\_66* is similar but with a cutoff point of 66%. These cutoff points are chosen meaningfully. In Mexico, the state budget and most state laws are approved with 50% of the votes,<sup>12</sup>, whereas state con-

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12. See Ugalde (2009)

stitutions are modified with 66% of the votes.<sup>13</sup> Thus, a simple or qualified co-partisan majority would allow the president to unilaterally implement budgetary and constitutional changes. With this, I propose:

**Hypothesis 1.3:** All else equal, prosecution is more likely to be observed when the co-partisan legislative fraction of the Executive is over 50%.

**Hypothesis 1.4:** All else equal, prosecution is more likely to be observed when the co-partisan legislative fraction of the Executive is over 66%.

### 4.2.3 *Control of the judiciary*

The second parameter,  $q$ , captures the degree of control of the Executive of the judiciary. I operationalize  $q$  as whether the nomination of judges is dependent on a decision of the executive. I rely on the combination of two *de jure* indicators of judicial independence. The first one provides temporal variation, and it is whether the investigating governor ( $g_{s,t+1}$ ) was elected before 1994. In this year, a comprehensive federal reform created an autonomous organ in charge of naming and removing judges (*Consejo de la Judicatura Federal*). Although this reform directly affected the judicial power in the federation, it also set in motion a number of state reforms aimed at increasing the independence of the judicial power (Concha-Cantú & Caballero Juárez, 2003). Thus, the second indicator provides geographical variation post-1994, and it indicates whether in each state the executive can or cannot influence the nomination of judges.<sup>14</sup> The result is a dichotomous variable called *judicial\_control*.

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13. Magaloni (2006) argues that electoral fraud in Mexico aimed not only at winning, but also at building a super majority that would allow Executives to manipulate institutions.

14. States where governors cannot influence the nomination of judges are: Baja California, Chihuahua, Jalisco, México, Morelos, Querétaro, Quintana Roo, Sinaloa, Tamaulipas, Veracruz, Yucatán (Concha-Cantú & Caballero Juárez, 2001).

Implication 2 refers to the control of the judiciary, and posits that Executives who control the judiciary will more likely open investigations against Politicians. This effect, however, occurs under democracy and not under authoritarianism. Thus, I propose the next two implications:

**Hypothesis 2.1:** All else equal, Executives that control judicial nominations will be associated with higher probabilities of observing prosecution.

**Hypothesis 2.2:** All else equal, Executives in democracies that control judicial nominations will be associated with higher probabilities of observing prosecution.

#### 4.2.4 *Payoffs*

Parameter  $r$ , or the amount of payoffs, is measured with a dichotomous variable that takes the value of 1 if both players (investigated and investigating) are of the same party, and 0 if not (*co-partisanship*). This measure relies on the assumption that governors will, on average, be able to credibly offer higher payoffs to exiting governors if they are co-partisan than if they are not. This assumption is reasonable because political parties provide a set of established channels to interact and solve conflict that might arise among their members, which can increase the credibility of the offers made. These channels can range from formal institutions such as primary elections, to informal (and even authoritarian) rules of autocratic parties.<sup>15</sup>

In addition, political parties provide alternative and less public ways of solving elite competition, because parties can be thought of as ‘labels’ (Snyder Jr & Ting, 2012). By prosecuting a member of one’s own party could possibly spillover the effects, and cause electoral losses for other candidates of the same party, an idea that was developed at length in section 2.1.1. Thus, I propose:

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15. See Langston (2006).

**Hypothesis 3.1:** All else equal, if the Politician is co-partisan of the Executive, prosecution is less likely to be observed.

#### 4.2.5 Overall corruption

The difficulties of measuring corruption has long been acknowledged Kaufmann *et al.* (2006), and scholars have adopted a number of empirical measures to gauge how much corruption there is. The measures range from widely-known subjective measures of corruption such as the Corruption Perception Index (Treisman, 2000), experienced corruption (Seligson, Mitchell A, 2002), and even number of politicians investigated of corruption-related crimes (Chang *et al.* , 2010). Unfortunately, as I discussed previously, most of these measures are available only at the country-level and for limited periods of time. An ideal operationalization for this dissertation would be some corruption measure that would vary across governors for the time period encompassed.

Thus, I present a novel measure of observable corruption (or observable alleged corruption) that captures variation across governors. Drawing from the newspaper *El Universal* archives, I coded the number of articles that mentioned each governor along with the terms ‘corruption,’ ( $m\_corr$ ) ‘illicit enrichment,’ ( $m\_enr$ ) and ‘bribery’ ( $m\_bri$ ).<sup>16</sup> With this I build the next measure:

$$corruption_{g,s,t} = \log(m\_corr_{g,s,t} + m\_enr_{g,s,t} + m\_bri_{g,s,t} + 1)$$

Relying on newspaper mentions controls for two alternative explanations that could explain the state’s response to corrupt actions. Firstly, the literature on corruption and accountability has long argued that information about the actions of the politicians is fun-

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16. *corrupción, enriquecimiento ilícito, and peculado*

damental to be held accountable by citizens (Pande, 2011), and by the state itself (Rose-Ackerman, 1996). Secondly, scholars have show that even in the presence of corruption, attribution of responsibility might not be clear (Tavits, 2007). I short, for corruption to become an issue, it has to be public and there must be a culprit. my measure precisely captures information about a specific politician’s behavior, so the possible alternative explanation that information is scarce no longer holds.

Finally, I would like to point out that anecdotal evidence of the pervasiveness of gubernatorial corruption abound since the inauguration of the modern political system (Buchenau & Beezley, 2009). During the data gathering of the dependent variable, I found accusations leveled against almost all governors, either by members of the opposition, businessmen, press, or other groups in the society. Some of those accusations ended up being investigated by the state’s attorney, but most of them did not. This suggests that although the level of corruption and the public knowledge about it might have changed with the introduction of elections, it is far from clear that those governors thought to be most corrupt are the ones that have been investigated.

With this operationalization, I propose the next implications:

**Hypothesis 4.1:** Holding the rest constant, governors with higher corruption levels will more likely be investigated.

**Hypothesis 4.2:** Holding the rest constant, governors with higher corruption levels will more likely be investigated in democracies than in authoritarian regimes.

#### 4.2.6 *Chances of victory*

Finally,  $\lambda(1 - \lambda)$  and  $\phi(1 - \phi)$  refers to the chances of victory of the Politician (Executive). I propose to operationalize this using the margin of victory of governor  $g_{s,t}$  as the difference

between votes received by the winner and the runner-up on the election that governor  $g_{s,t}$  was elected, and report this as a ratio of these votes:

$$\log(\text{margin}_{g,s,t}) = \log\left(\frac{v_{.01}g_{s,t} - v_{.02}g_{s,t}}{v_{.01}g_{s,t} + v_{.02}g_{s,t}}\right)$$

Where  $v_{.01}g_{s,t}$  are the votes received by winner (governor  $g$ ) when  $g$  was elected and  $v_{.02}g_{s,t}$  are votes received by second place when  $g$  was elected

Given that Mexico prohibited reelection during authoritarian times, elections were strictly conducted at least every six years. Thus, this is one of the few measures of competitiveness that is available regardless of institutional and political changes that might be related to the mere existence of elections. When elections are free and fair, operationalizing margin of victory as an indicator of competitiveness is appropriate. But in the 1990s, Mexico's ruling PRI party was famous for their manipulation and rigging of the elections. This raises the question of how informative elections are regarding the competitiveness of a candidate. I draw from recent research on electoral manipulation in Mexico to argue that electoral results can convey information regarding the strength of the ruling elite. Specifically, I rely on the argument developed by Simpson (2013), which posits that crafting a margin of victory larger than necessary for winning can help signal that those in power are strong. Thus, larger margins of victory would indeed signal more strength (higher  $\lambda$  or  $\phi$ ) even if such margin is manipulated. The particular nature of Mexican elections make margin of victory a uniquely suited measure for competitiveness across regime type.

The last two empirical implications of the model regard parameters  $\lambda$  and  $\phi$ . Based on the comparative static of implication 5, we can say:

**Hypothesis 5.1:** Holding the rest constant, a increase in the logged margin of victory has no effect on the probability of prosecution.

### 4.3 Testing the model's implications

I begin by testing the direct effects of the variables of interest, and I present two sets of models, reported in the tables below. Tables 4.2 and 4.3 both present logistic regressions estimating probabilities of prosecution. The first table estimates regime type as *alternation*, whereas the second operationalizes it as *fraction*. In all models, regime type is statistically significant ( $\alpha = 0.05$ ).

Table 4.2: Explaining investigation with regime type as alternation (elected only)

	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
<i>alternation</i>	2.145*** (0.664)	2.164*** (0.666)	1.942** (0.778)	2.066** (0.817)	1.811** (0.839)
<i>judicial_control</i>		0.272 (0.577)	0.215 (0.586)	0.149 (0.601)	0.225 (0.619)
<i>co-partisanship</i>			-0.348 (0.621)	-0.353 (0.623)	-0.210 (0.643)
<i>corruption</i>				-0.126 (0.213)	-0.299 (0.244)
<i>log(margin)</i>					-0.527* (0.286)
Constant	-2.752*** (0.595)	-2.954*** (0.742)	-2.562** (1.015)	-2.118* (1.258)	-2.522* (1.335)
Observations	101	101	101	101	101
Log Likelihood	-44.460	-44.347	-44.188	-44.013	-42.266
Akaike Inf. Crit.	92.920	94.693	96.376	98.026	96.532

Note:

\* $p < 0.1$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$

In table 4.2 shows a positive coefficient, which means that incoming governors in states that have experienced alternation are more likely to prosecute their predecessors. The

effect is also substantively important: holding everything else constant, an executive that has experienced alternation is six times more likely to investigate his or her predecessor than one that has not experienced alternation.

Table 4.3: Explaining investigation with regime type as fraction (elected only)

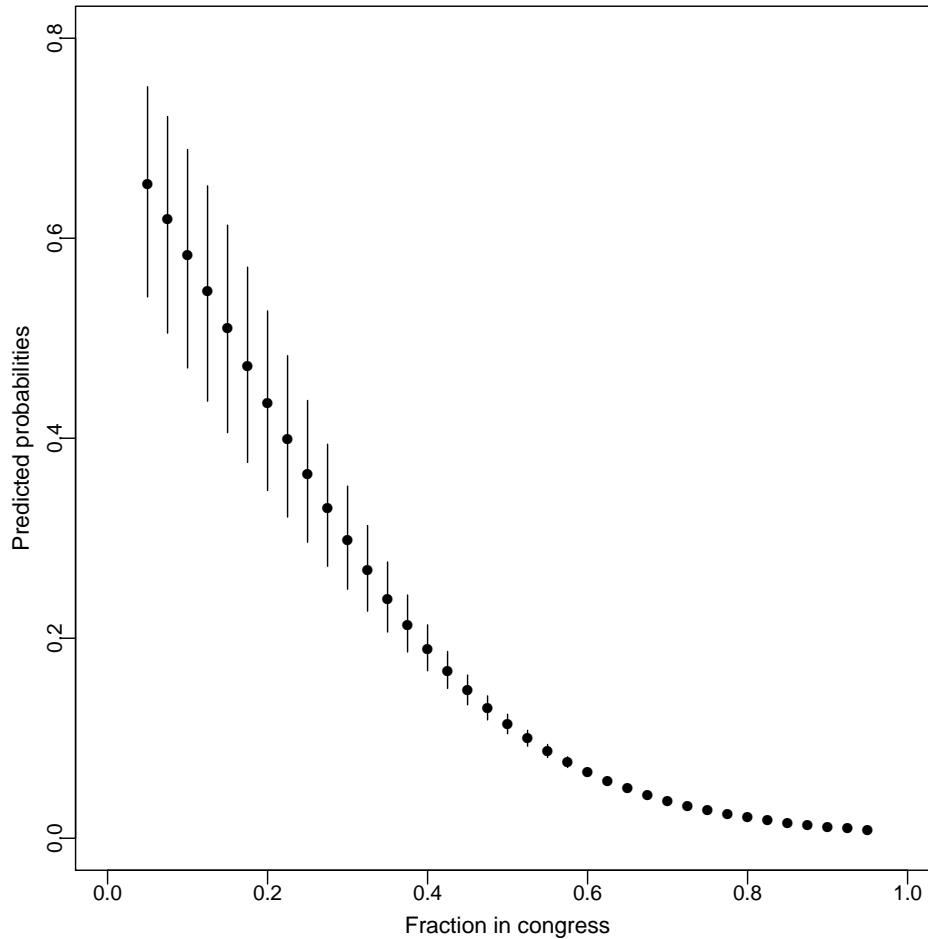
	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
<i>fraction</i>	-6.994*** (2.034)	-7.022*** (2.046)	-6.018*** (2.215)	-6.495*** (2.277)	-5.972** (2.319)
<i>judicial_control</i>		0.197 (0.580)	0.089 (0.588)	-0.075 (0.624)	-0.066 (0.643)
<i>co-partisanship</i>			-0.721 (0.584)	-0.767 (0.593)	-0.543 (0.615)
<i>corruption</i>				-0.176 (0.205)	-0.342 (0.237)
<i>log(margin)</i>					-0.515* (0.278)
Constant	1.850** (0.921)	1.728* (0.992)	1.780* (1.010)	2.798* (1.563)	1.976 (1.677)
Observations	101	101	101	101	101
Log Likelihood	-44.075	-44.017	-43.265	-42.893	-41.103
Akaike Inf. Crit.	92.151	94.034	94.529	95.787	94.205

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

Table 4.3 shows that *fraction* is negatively correlated with the probability of being investigated: incoming executives that govern with higher co-partisan fractions of the legislature are less likely to investigate their predecessors than executives that govern with lower co-partisans in the legislature. This is consistent with hypothesis 4.2.2, and suggests that governors that rule with no horizontal constraints prosecute less. The substantive effect of this is shown in plot 4.1, where the estimated probabilities are shown for varying

values of *fraction*. As can be seen, the estimated probability changes from around 0.7 when the 10% of the legislature is co-partisan of the Executive, to below 0.1 when the governor's party fraction is above 80%.<sup>17</sup>

Figure 4.1: Predicted probability of investigation and fraction (with 95% c.i., model 5)



A few issues arise in this model. Firstly, none of the other variables are statistically significant. Since the theory hypothesized that the effect of some of these variables would be mediated by regime type, so I do not address this in depth here. The second issue, more important issue, is that the data analyzed here is an unbalanced panel. This means that we observe several governors within states, so observations cannot be assumed to be independent. This raises the concern that state-specific characteristics might impact either the co-

17. Predicted probabilities using model 5 with all variables set at their medians.

efficient estimates (causing bias), or the variability of the estimates (causing inefficiency). Because some states in the dataset have never experienced alternation, the traditional solution of including a series of indicator variables for each state results in collinearity on a dataset this size. However, the Appendix reports the results for this same specification with varying intercepts by state estimated using a multilevel approach (section B.7), and with clustered standard errors by state B.8. The specifications do not substantially change the findings, although the effect of variable *fraction* seems to be more robust to the addition of state-fixed effects than the variable *alternation*.

### 4.3.1 Interaction effects

The remaining hypotheses posited that the effects of some variables (specifically judicial control and corruption, hypotheses 4.2.3 and 4.2.5) would be mediated by regime type. I test these relationships using a multilevel model. Multilevel models are increasingly popular in handling hierarchical data structures, data that consists of observations within groups. In simple words, multilevel models can be seen as a compromise between models that completely disregard group-level characteristics, pooling all data together, and estimations that treat group-level characteristics as unrelated to each other (Gelman, 2006). This compromise considers group specific characteristics as deviations from a global mean, and structures these deviations based on the available information of the group.

To estimate these models, I first estimate a somewhat naïve model that groups all the characteristics of the *investigated* governor at the governor-level, and the characteristics of the *investigating* governor at the group-level. Model 1 is specified in the next form:

$$\begin{aligned} \text{logit}(\text{Pr}(\text{inv}_{g,s,t})) = & \beta_0 * \log(\text{margin}_{g,s,t}) + \beta_1 * \text{corruption}_{g,s,t} + \\ & \beta_d * \text{regime}_{g,s,t+1} + \beta_a * \text{regime}_{g,s,t+1} + e_{g,s,t} \end{aligned}$$

Where:  $\beta_d = \gamma_{d0} * regime_{g,s,t+1} +$   
 $\gamma_{d1} * co-partisanship_{g,s,t+1} +$   
 $\gamma_{d2} * judicial\_control_{g,s,t+1} + u_d$

And:  $\beta_a = \gamma_{a0} * regime_{g,s,t+1} +$   
 $\gamma_{a1} * co-partisanship_{g,s,t+1} +$   
 $\gamma_{a2} * judicial\_control_{g,s,t+1} + u_a$

For the multilevel models, I rely on the operationalization of regime type as *fraction\_over\_50* or *fraction\_over\_66*. Since the coefficients are estimated for two different levels, I report the results of the governor-level coefficients in table 4.4 ( $\beta_0$  and  $\beta_1$  in the model). Neither of these variables is robustly significant, although both are consistently negative.

Table 4.4: Explaining investigation (all but margin and corruption varying by fraction, elected only)

Model 1: Logistic estimation		
	<i>fraction_50</i>	<i>fraction_66</i>
<i>log(margin)</i>	-0.406 (0.254)	-0.556** (0.266)
<i>corruption</i>	-0.332* (0.177)	-0.314 (0.226)
Observations	101	101
Log Likelihood	-43.349	-47.794
Akaike Inf. Crit.	102.698	111.588
Bayesian Inf. Crit.	123.619	132.509
Note:	*p<0.1; **p<0.05; ***p<0.01	

More importantly, however, figure 4.2 shows the estimated coefficients in the group-level and their 95% confidence interval. The coefficients in the left are the coefficients associated with democratic investigating governors ( $\gamma_{d0}$ ,  $\gamma_{d1}$ , and  $\gamma_{d2}$ ), and the coefficients in the right are associated with authoritarian investigating governors ( $\gamma_{a0}$ ,  $\gamma_{a1}$ , and  $\gamma_{a2}$ ). Firstly, note that all the intercepts of the low constraint group are negative and statistically distinguishable from zero on all models. This intercept can be understood as the average effect of being an authoritarian governor on the probability of prosecuting his predecessor. The figure shows that, on average, authoritarian incoming governors investigate less than democratic ones, which is consistent with the findings above and hypothesis 4.2.2.

The effect of *co-partisanship* is negative in all cases, although it not statistically different from zero in the upper left panel. Nevertheless, the fact that it is consistently negative provides additional support to hypothesis 4.2.4: governors tend to investigate less those outgoing governors from their same party. Finally, the coefficient associated to *judicial\_control* is only different from zero on the right superior panel, which is the panel when governors are considered authoritarian when their co-partisan fraction in the local legislature is over 50%. This provides evidence against hypothesis 4.2.3.

I also present a second estimation in the next form:

$$\logit(\Pr(inv_{g,s,t})) = \beta_0 * \log(margin_{g,s,t}) + \beta_1 * co-partisanship_{g,s,t+1} + \beta_d * regime_{g,s,t+1} + \beta_a * regime_{g,s,t+1} + e_{g,s,t}$$

$$\text{Where: } \beta_d = \gamma_{d0} * regime_{g,s,t+1} +$$

$$\gamma_{d1} * corruption_{g,s,t}$$

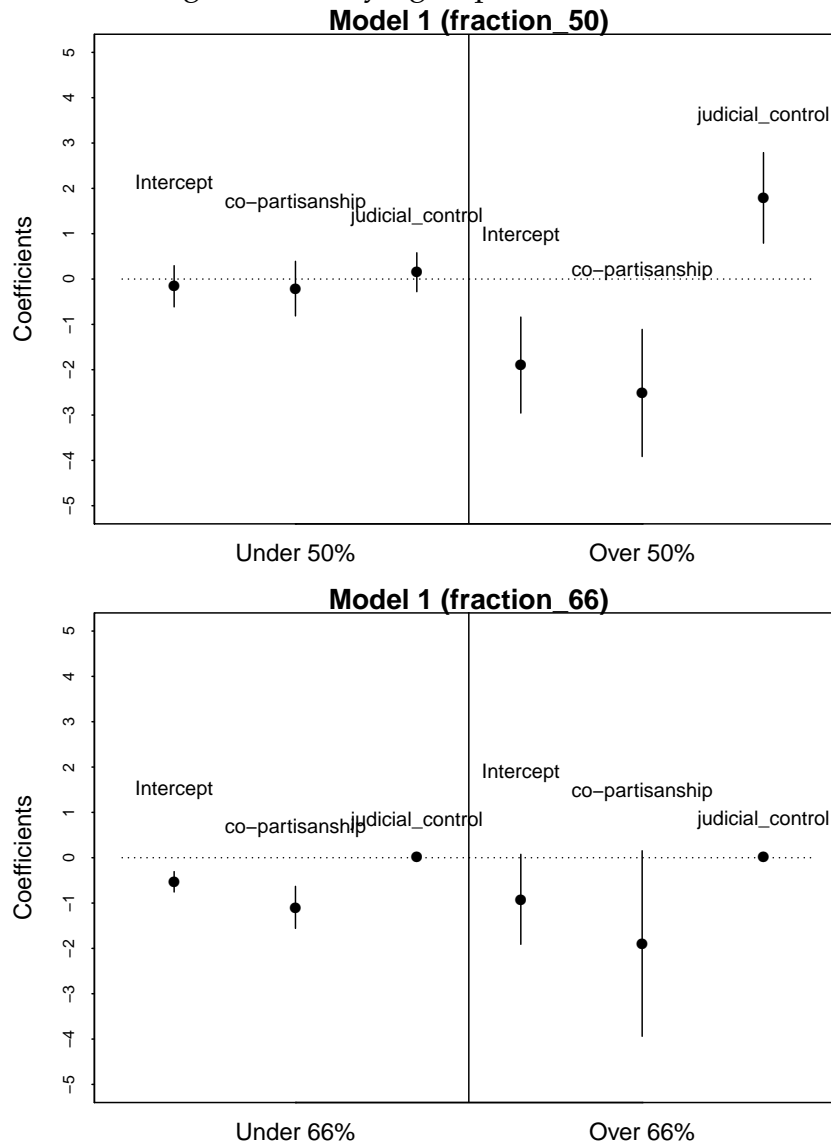
$$\gamma_{d2} * judicial\_control_{g,s,t+1} + u_d$$

$$\text{And: } \beta_a = \gamma_{a0} * regime_{g,s,t+1} +$$

$$\gamma_{a1} * corruption_{g,s,t} +$$

$$\gamma_{a2} * judicial\_control_{g,s,t+1} + u_a$$

Figure 4.2: Varying slopes from Model 1



This model has two regressors at the governor-level, the logged margin of victory and whether the investigated and investigating governor are co-partisans. According to the theoretical predictions, the chances of victory, measured here with  $\log(\text{margin})$  should not impact the probability of investigation (hypothesis 4.2.6). In addition, we would expect that governors would not investigate their co-partisans as often as politicians from a different party regardless of regime type.

The model also estimates an intercept, a coefficient for *judicial\_control* and a coefficient for *corruption* per group. From hypotheses 4.2.5 and 4.2.3, we know that these effects should be mediated by regime type. The results are reported in table 4.5, and plot 4.3.

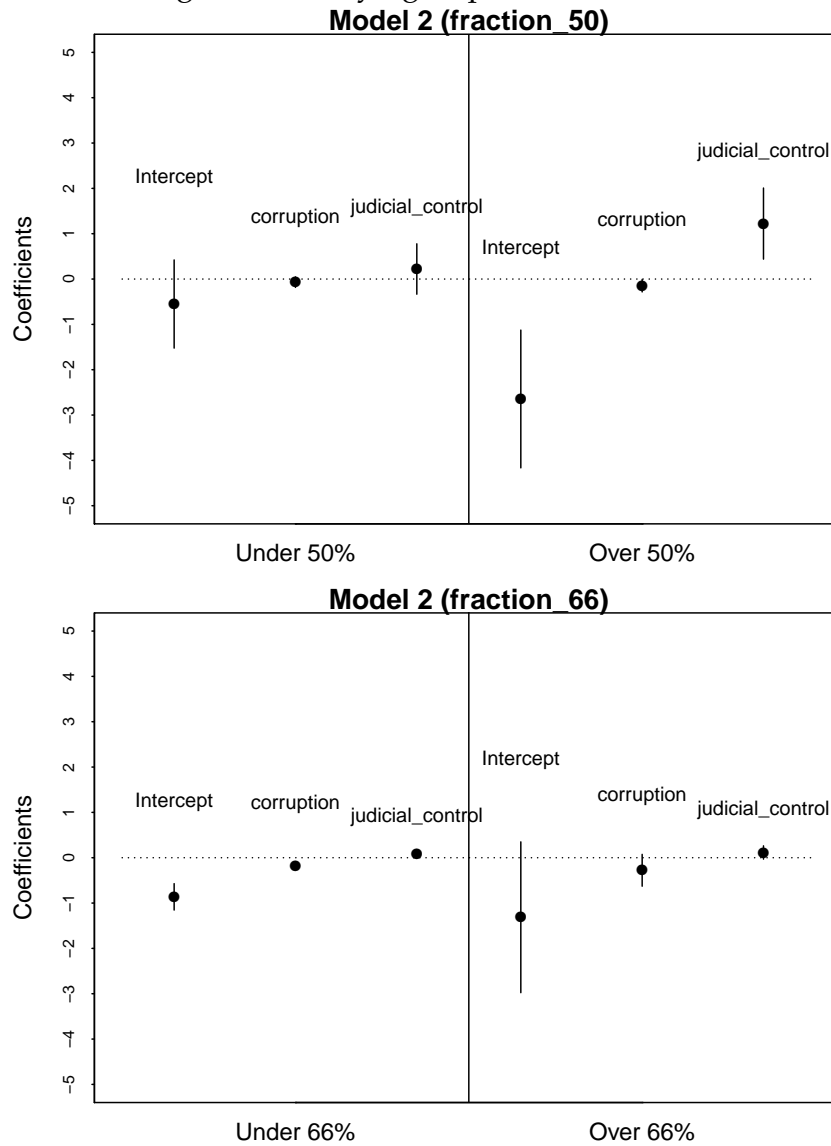
Table 4.5: Explaining investigation (all but margin and co-partisan varying by fraction, elected only)

Model 2: logistic estimation		
	<i>fraction_50</i>	<i>fraction_66</i>
<i>log(margin)</i>	-0.279 (0.342)	-0.480* (0.284)
<i>co-partisan</i>	-1.040* (0.615)	-1.220** (0.606)
Observations	101	101
Log Likelihood	-45.348	-47.970
Akaike Inf. Crit.	106.697	111.941
Bayesian Inf. Crit.	127.618	132.862
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01	

This table shows that *log(margin)* is not statistically related to the probability of investigation, something that partially support hypothesis 4.2.6. Of course, one should be cautious from drawing inferences from null findings. In addition, the results for *co-partisanship* shows that it is negatively correlated with investigation although it is only statistically significant at the 95% confidence level when regime type is proxied by *fraction\_66*. This is a finding consistent with hypothesis 4.2.4 that suggested that co-partisans will prosecute each other less frequently.

Plot 4.3 shows the results for the second level of model 2. Comparing the intercepts we can see that, on average, governors in authoritarian regimes initiate investigation to a lower degree, something that is much clearer when the cutoff point to be considered a democratic governor is 50%.

Figure 4.3: Varying slopes from Models 2



In addition, the plot shows that for all operationalizations of regime type, the effect of *corruption* is effectively indistinguishable from zero. This does not conform to hypothesis 4.2.5, something that is interesting in itself: in Mexico, governors associated with corruption in the press are not investigated more frequently.

Finally, the models find a positive effect for *judicial\_control* in the probability of prosecution when the cutoff point of 50%. This is shown in the top-figure, although the effect is larger for authoritarian regimes. This is a striking result that does not conform to the hy-

pothesized effects, particularly hypothesis 4.2.3. I make sense of these results in the next section.

### 4.3.2 Prosecution under authoritarianism

The previous models strongly suggest that local executives that have experienced alternation and that govern with no horizontal constraints prosecute more often than those who govern unchecked. In addition, I find that prosecutions are less likely if incoming and outgoing governors are from the same party, and that corruption scandals are not statistically related to the probability of being investigated.

In addition, I find that the effect of *judicial\_control* on investigation might be larger in authoritarian Executives, a finding that does not conform with the predictions of the theoretical model. In this section I argue that that result might be driven by the low number of prosecutions observed in places where the executive is unconstrained. To study this possibility, I present a table that separates investigating governors into having a large co-partisan fraction in congress, and then looking into the distribution of investigations by co-partisanship and judicial control. For reasons of space, I only show here the table that operationalizes regime as *fraction\_50*. Additional operationalizations are included in the Appendix (section B.10).

Table 4.6: Official investigations and judicial control (by *fraction\_over\_50*, elected only)

	Under 50%		Over 50%	
	Not investigated	Investigated	Not investigated	Investigated
No judicial control	11 (64.7%)	6 (35.3%)	14 (100%)	0 (0%)
Judicial control	22 (64.7%)	12 (35.3%)	33 (91.7%)	3 (8.3%)
Total	33 (64.7%)	18 (35.3%)	47 (94%)	3 (6%)

Table 4.6 shows all judicial processes initiated by governors that ruled with majorities were also governor that controlled the judiciary. This suggests that effect of a judiciary under governors that face little opposition might be driven by a small number of occurrences. Interestingly, the left side of the table shows that governors with under 50% of

a co-partisan legislature prosecute at the same rate when they can nominate justices than when they cannot.

Table 4.7: Official investigations by fraction and co-partisanship (elected only)

	Under 50%		Over 50%	
	Not investigated	Investigated	Not investigated	Investigated
Different party	14 (58.3%)	10 (41.7%)	5 (71.4%)	2 (28.6%)
Co-partisans	19 (70.4%)	8 (29.6%)	42 (97.7%)	1 (2.3%)
Total	33 (64.7%)	18 (35.3%)	47 (94%)	3 (6%)

Table 4.7 shows the relationship between *co-partisanship* and investigation. The table shows that executives that face more opposition (under 50% of co-partisan legislature) investigate co-partisans to a lower extent than predecessors from different parties (29.6% versus 41.7%). The difference is even more striking for those who govern with less opposition (over 50%): 28.6% versus 2.3%. However, there are only 3 cases of investigations, and most governors with majority in the legislature have co-partisan predecessors.

The analysis presented here find little evidence to support hypotheses 4.2.3 and 4.2.3. These stated that executives in democracy prosecute more often if they control the judiciary. This could be due to the reliance on *de jure* measures of independence, so future efforts should be directed at (1) validating this variable, or (2) improving the operationalization of *q*.

More importantly, however, the empirical evidence shows that Executives that rule with horizontal checks on power indeed prosecute more often than those who face little opposition in Congress. This result is robust to the inclusion of fixed effects by state, and estimations with clustered standard errors (reported in the Appendix). The difference in frequency of prosecution across regime types is still visible even after controlling for selection effects.<sup>18</sup> In addition, governors in democracies are more likely to prosecute the opposition than their co-partisans, a result that stands even after controlling for the underlying amount of known corruption. This fact suggests that democracies prosecute

18. Section B.11 of the Appendix reports the frequencies of prosecution across regimes in a data set matched by margin of victory.

more often, but that the cases that Executives decide to pursue respond to a political use of prosecution and not to an increase in oversight.

#### **4.4 Conclusion**

The multilevel model estimated in this paper and the tables shown here support the main findings of the theory presented. Summarizing, the empirical implications derived from the theoretical model proposed that democratic executives prosecute more often than executives in authoritarianism and that such prosecution is politicized. By politicized I refer specifically to the fact that executives under democracy would prosecute their co-partisans less frequently than politicians from other parties, even after controlling for underlying amounts of corruption.

Taken together, these findings support the idea that prosecution in democracies is more frequent. However, the mechanisms by which prosecution occurs are less related to the production of information regarding malfeasance or the oversight of opposition as has been suggested by the literature. Instead, they seem to be consistent with the notion that, in democracies, politicians lack alternative coercive means to curb opposition so they rely instead on the legal apparatus to control and weaken their competitors. In this way, the theory proposed shows that, in democracies, prosecution might be utilized by those in power, and not necessarily by the opposition. Key to this process is the fact that prosecutors, who are directly dependent on the executive, often control the investigative process.

## CHAPTER 5

### RULING THROUGH SCANDAL

In the previous chapters, I developed and tested a theory of corruption prosecution across regime types. In this chapter, I continue to compare corruption prosecution in democracy and under authoritarianism, but I focus on the citizen's perceptions of prosecution. In short, my argument is that prosecuting corrupt politicians can further alienate citizens from their government by associating instances of lawful accountability (investigating a well-known corrupt politician) with authoritarian motives (control of the opposition). This association, as I will show, is largely enabled by the context of pervasive corruption and the politicized use of the judiciary explained in previous chapters of the dissertation. In short, I show that judicially prosecuting malfeasance might not be synonymous with accountability in the eyes of the public.

In order to illustrate my argument, I recount two scandalous cases of corruption prosecution in Mexico: the 1989 arrest of the head of the oil union, Joaquín Hernández Galicia *La Quina*, and the 2008 *michoacanazo*, a sting operation against 40 public officials accused of money laundering and ties to criminal organizations. The arrests, although conducted in vastly different institutional contexts and with disparate judicial outcomes, elicited remarkably similar public reactions. Such reactions were characterized by simultaneously acknowledging the legal merits of the case while agreeing that the arrests were motivated by an authoritarian logic of control and punishment of political rivals.

My analysis raises a critique against contemporary literature: it has too often assumed that corruption prosecution when conducted legally against figures heavily suspected of corruption, is an instance of accountability. I conclude this chapter by arguing that a closer reading of these prosecutions uncover instead a reaction that is much less optimistic about punitive approaches to corruption, especially when it comes to improving people's relationship with their governments.

## 5.1 Prosecution and accountability in comparative perspective

Just a few months after Enrique Peña Nieto became Mexico's president, the PGR (*Procuraduría General de la República*, a Mexican ministry akin to the office of the Attorney General) detained Elba Esther Gordillo. Elba Esther, or *la Maestra* had come to power in 1989 as head of the Teachers' Union, the largest union in Latin America. From the beginning she ran an infamous administration surrounded by corruption scandals. For example, her administration purchased 60 Hummers to buy the support of local leaders of the union. When this purchase became public and the scandal erupted, the Hummers were raffled to help schools in need. Her lavish lifestyle of luxurious handbags and properties worth millions of dollars was frequently the center of newspaper and magazine articles, and the media implicitly or explicitly attributed her personal fortune to corrupt practices. Thus, it was no surprise that the arrest followed an accusation of embezzlement, backed with evidence that documented large transactions of the union's money to Swiss bank accounts, and receipts proving that she had spent 2.1 million dollars in the departmental store Neimann-Marcus.

By all theoretical predictions, the arrest of Elba Esther, a figure known for her corruption scandals, should have been deemed an instance of lawful accountability. Yet, some of the reactions to her arrest were markedly ambivalent in this respect. For example, a survey revealed that a vast majority of respondents (86%) agreed with the detention and thought that Elba Esther was guilty of the charges (75%),<sup>1</sup> while a different survey reported that her arrest was seen as a 'political vengeance' by 58% of respondents.<sup>2</sup> Journalist León Krauze wrote a column explaining the 'two readings' of the arrest: one in which the detention was aimed at showing the authority of Peña Nieto, and the other in which the detention was an example of the swift administration of justice.<sup>3</sup> The former reading was favored

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1. Excélsior (2013)

2. ADNPolítico (2014)

3. See Krauze (2013)

by scholars and members of the opposition alike who stated, for example, that the arrest served political and electoral reasons,<sup>4</sup> and that the detention was aimed at increasing the ‘legitimacy’ of the regime.<sup>5</sup>

Contemporary literature does not provide a theoretical framework to make sense of these reactions, which as we will see, are astonishingly common in Mexico and other developing countries. Judicial action, when conducted lawfully and directed against corrupt politicians is a sign of a self-regulating government who holds its corrupt members accountable, and thus should improve the citizens’ opinion of their government. Literature has found evidence that anti-corruption raids and judicial prosecutions of corruption increase public trust (Chandler, 2006), although too many corruption scandals can hinder trust in the political process (Bowler & Karp, 2004). Prosecuting corruption also affects vote choice and strengthens the capacity of voters to ‘vote out’ undesirable politicians (Peters & Welch, 1980; Costas Pérez *et al.* , 2011), and perceiving that the government is efficient in fighting corruption also positively impacts trust in institutions in China, Japan, and South Korea (Kim & Voorhees, 2011).

These studies, however, are built under the assumption that the impact anticorruption raids have on the public can be meaningfully captured along a single dimension. This dimension, either vote choice or trust, is then translated into larger claims of how punitive approaches to corruption improve the relationship between citizens and their governments. This unidimensionality allows for parsimonious theories that translate governmental action to a desirable or undesirable outcome, but can sometimes obscure our understanding of citizen’s perceptions of governmental action when it combats corruption. Concretely, this chapter will argue that anticorruption raids, especially when conducted against high-level politicians, can elicit ambivalent responses in the public. Such responses illustrate how citizens witness and interpret the process with regards to its legality and ad-

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4. Lorenzo Mayer, quoted in Aristegui Noticias (2013b).

5. Opposition leader Andrés Manuel López Obrador, quoted in: ADNPolítico (2013)

equacy, but also with regards to the motivations that set in motion the process in the first place. By analyzing two cases in which high-level politicians were arrested, I will show how corruption prosecution can be considered legally adequate while also being displays of authoritarian power.

To better explain how my argument departs from existing literature on public opinion, I borrow Redlawsk & McCann (2005) study of the two dimensions of 'corruption' in the public's understanding. In their study, the authors formulated a series of hypothetical situations, and asked respondents to rate how corrupt would each situation be. Then, they associate such actions with either *lawbreaking* or *favoritism*. For example, a hypothetical action associated with lawbreaking is: "A police officer accepted money not to write a traffic ticket on a speeding driver," whereas "An official recommended an out-of-work friend for a government job" is linked to favoritism (Redlawsk & McCann, 2005, 266-270). They find empirical support for these two theoretical dimensions: voters do think of these two types of actions differently.

Although the study is aimed at understanding the complexity of subjective perceptions of corruption, it does not provide an adequate framework for the specific ambivalence I identify. Decidedly, arrests can be deemed illegal when conducted with no evidence and no regard for due process, and they can also be seen as favoritism if they target political opposition. What I stress here instead is that corruption prosecution can be considered to simultaneously combat an act of corruption as lawbreaking, while itself being corrupt because of the favoritism displayed. This ambivalence is precisely what I argue is missed when capturing the effects of anticorruption in a single measurement of the public's opinion.

Of course, one could convincingly argue that the reactions of the public are largely a reflection of the *quality* of the prosecution. Not all judicial systems and processes are created equal: some institutional settings encourage fair and lawful prosecutions, whereas others allow for gross manipulations of justice to occur. Specifically, the literature has ar-

gued that the judiciary is more likely to ignore political interests and decide a case based on the evidence presented when it is independent of the executive (Ríos-Figueroa, 2006). In addition, the presence of checks and balances (Persson *et al.* , 1997) and electoral competition (Lederman *et al.* , 2005) incentivize prosecution of malfeasance. In short, if these democratic institutions exist, prosecutions are likely to target actual corruption and to be conducted lawfully.

Furthermore, if such institutional safeguards are lacking, politicians will be able to manipulate legal institutions to further their own, generally authoritarian in nature. The literature on authoritarian regimes have long known the repressive potential of courts, especially when dealing with the opposition (Toharia, 1974; Pereira, 2005; Magaloni, 2008, for example). The manipulation of justice has also been noticed in hybrid regimes, where formal democratic institutions are in place, but they are abused by the incumbent to gain political advantage (Diamond, 2002; Levitsky & Way, 2010). Such abuses are enabled by the politicization of judges and courts through reform (Sanchez Urribarri, 2011) or outright bribery (McMillan & Zoido, 2004).

Importantly, this literature does not readily preclude the existence of the ambivalence presented here. Instead, it overlooks it by embracing a stark contrast between the judicial outcomes expected in places with democratic constraints and the outcomes in an authoritarian regime. Whereas the former are presumed to produce accountability, the latter will bring about authoritarian control. As such, the institutional explanation is also somewhat insufficient to empirically explain the ambivalence discussed here. Such insufficiency is confirmed empirically in the next section, where vastly different institutional settings produced remarkably similar ambivalent reactions.

## **5.2 Authoritarian motives and democratic accountability**

I analyze accounts of two prosecutorial cases in Mexico: the cases known as the *quinazo*, and the *michoacanazo*. Each of these cases represent a somewhat spectacular judicial oper-

ation ordered by the PGR (*Procuraduría General de la República*), a figure akin to the Attorney General. As many other prosecutorial offices in developed democracies, it depends directly on the executive power. This empirical section accomplishes two goals. On the one hand, it presents two cases that illustrate the ambivalence expressed by citizens when witnessing a scandalous case of corruption prosecution. On the other, the case selection addresses the possible alternative explanation that the quality of the prosecution is largely determined by the institutional setting in which it occurs.

The cases chosen here follow a most different design, and I rely on accounts published in newspapers and magazines narrating the case, as well as on memoirs and party documents. The specific point of view offered by these documents allow us to observe what the authors considered to be the relevant pieces of information to make sense of the judicial process. These pieces of information can be assumptions, facts, or more importantly, interpretations about the facts. These documents structure prosecution as a political action, and in doing so they express, unbound, the relationship between the citizens and the government. Of course, the analysis presented here is not aimed at analyzing the actual motives of the incumbent for conducting the prosecutions, nor to argue whether the narratives presented here accurately reflect the culpability of the accused. Rather, the analysis is about understanding how specific judicial processes inform citizens about how authoritarian power is exercised even when it holds corrupt politicians accountable.

### 5.2.1 *Ruling through scandal*

In January 1989, Joaquín Hernández Galicia *La Quina*, the union leader of the state-owned oil company Pemex, was arrested in his house in Ciudad Madero, Tamaulipas. At the time of his arrest, *La Quina* was charged with the illegal introduction of weapons to the country, resisting arrest, and murder. As part of the same operation, 37 other union members (and part of the high bureaucracy of the union) were also jailed. Unsurprisingly, Hernández Galicia called his arrest a ‘conspiracy’ (*conjura*), and claimed that his detention had been

orchestrated by the then governor of the state of Mexico.<sup>6</sup> He even claimed that the president would soon realize that he was being set up. *La Quina* was tried, and sentenced to 35 years, although his sentence was later reduced to 13 years. He ended up spending 8 years in jail, and was released after president Ernesto Zedillo, Salinas' successor, granted him amnesty.

The arrest, which would soon be known as the *quinazo*, occurred under a strong presidential single party regime. Since its foundation in 1929, the ruling party PRI had maintained the control of the government. The Mexican regime was one of the most stable authoritarian regimes in the world (Maxfield, 1996). Such stability was largely due to its unique combination of a hierarchical political system that concentrated an enormous amount of power and authority in hands of the president (Weldon, 1997) and a strict no-re-election rule that institutionalized peaceful presidential turnover every 6 years.

At the time of the *quinazo*, political opposition was permitted to organize and compete in elections. An electoral reform passed in 1986 had introduced 100 more proportional representation seats, which greatly increased the presence of the opposition in the lower chamber. In the 1988 elections, the PRI won only 52% of the seats (Guerrero, 2004, p. 57), compared to the 72% of the seats they controlled in the previous legislature. Despite the increased presence of opposition in Congress, the PRI still controlled the electoral machinery, which allowed for widespread fraud and electoral rigging (Magaloni, 2006).

Given the increased presence of the opposition and the fact that the PRI was still displaying their electoral machinery, it is not surprising that the 1988 elections gave way to one of the largest post-electoral conflicts witnessed in the country. Such conflict openly confronted Carlos Salinas de Gortari, the winning candidate of the ruling party PRI, and Cuauhtémoc Cárdenas, a former *príista* who had splintered and created his own opposition party (*Partido de la Revolución Democrática*, or PRD). Carlos Salinas was declared win-

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6. Mario Ramón Beteta, former director of Pemex and then governor of the state of Mexico, had been accused by the Pemex union of corruptly renting some oil ships Loyola Díaz (1990).

ner amidst widespread accusations of electoral fraud: six out of seven opposition parties denounced ballot manipulation, and part of the opposition called for popular mobilizations to protests the results (Reding, 1988, 615).

During that time, the president also relied on the court system as key components of his force and authority (Domingo, 2000). Of course, this does not mean that the judicial system was nothing but a puppet of the regime or of the president. Research has shown that the courts had a non-negligible amount of autonomy *vis-à-vis* the president in the form of *amparos*, which protected citizens from possible abuses of authority. However, even these *amparos* operated in cases that were “politically unimportant” (Domingo, 2000, 717).

Therefore, the institutional and political context in which *la Quina* was arrested perfectly exemplifies the conditions under which we should expect disenchantment with the arrest of a public figure: an autocratic president with the power to manipulate the judicial system, and with little political counterweights to prevent him from using it. Indeed, the articles published in the media regarding the arrest showed the belief that the sting had been orchestrated by the recently declared president. Importantly, these reflections often signaled that such a move was directed at imposing his presidential authority, a crucial element in the wake of the post-electoral conflict. For example, an article published in *Nexos*,<sup>7</sup> opened by saying that, in case anyone doubted, it was on the morning of the arrest of *La Quina* that Salinas de Gortari finally came to power (Pérez Gay, 1989). In a similar article, we also find the suggestion of the arrest as a show of authority:

Now we begin to understand what *salinismo* considers political modernization.

Resorting to force, and carefully covered under “reason of state” and “national security,” he [Salinas] is willing to use a firm hand, and at least in this occa-

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7. *Nexos* is a scholarly magazine where public intellectuals often publish research or opinion pieces (Lawson, 2002, see pages 67-69).

sion he chose to act without previous threats. The formal inauguration of the *salinista* regime just happened in Ciudad Madero and in Mexico city.<sup>8</sup>

A different way of narrating the consolidation of the presidency of Carlos Salinas, that nevertheless evokes the same authoritarian use of force, depicts the arrest as a *legitimizing* move: “[T]he public exhibition of the scandalous intimacy of the system—exhibition that was necessary to fully de-legitimize the fallen leader [*La Quina*] and to try to legitimize the force that eliminated him—produce in the public a morbid pleasure”<sup>9</sup>. I find that the idea that the arrest ‘legitimized’ Carlos Salinas as a president is widely used when explaining the detention, even in recent accounts of the case (García Estrada, 2013, for example). Since Salinas had come to power amidst what had been one of the largest post-electoral conflicts in Mexico, I consider that the ‘legitimacy’ element in these accounts specifically refers to increasing the president’s popularity.<sup>10</sup>

Given the context of authoritarianism, it is not surprising that the columns portray the arrest as an authoritarian move. What is somewhat intriguing, however, is the legal quality given to the judicial process by some intellectuals: “[t]he charges levied against Hernández Galicia and his collaborators confirmed the vox populi about his methods and power that had hitherto only been denied by cynics.”<sup>11</sup> This quote begins to uncover the complexities of how the legal process was viewed. On the one hand, the charges *confirm* the power and methods used by *La Quina*. Of course, for a legal process to *confirm* the

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8. “Ahora empezamos a desbrozar lo que el salinismo entiende por modernización política. Con recursos de fuerza, y cartesianamente amparado bajo la “razón de estado” y la “seguridad nacional” está dispuesto a la mano dura, y por lo menos en esta ocasión prefirió actuar sin amenazas previas. La inauguración formal del régimen salinista acaba de ocurrir en las ciudades de Madero y México.” The quote is from Bellinghausen (1989), and was also published in *Nexos*.

9. “[L]a exposición pública de las intimidades escandalosas del sistema—exposición necesaria para deslegitimar plenamente al líder caído y tratar de legitimar a la fuerza que lo derribó—producen en una parte del público un placer morboso.” (Meyer, 1989, emphasis added)

10. An alternative interpretation of ‘legitimacy’ in this context could be the use of governmental institutions as a display of power, a way to confirm that the authority to exercise legal and judicial power was in the hands of Salinas, even in the face of the accusations of fraud.

11. “A fin de cuentas los cargos contra Hernández Galicia y colaboradores vinieron a confirmar una vox populi sobre sus procedimientos y su poder que solo era disimulada por los cínicos.” (Bellinghausen, 1989)

malfeasance of a politician, it must be regarded as having some value in demonstrating the culpability of the accused. Thus, the judicial process is seen as legally appropriate, even in the presence of an authoritarian president with control of the prosecutor and the court, who had also allegedly ordered the arrest for strategic and authoritarian purposes.

In a similar vein, writer and journalist Rafael Pérez Gay, expressed political and legal satisfaction with the process:

Hernández Galicia and his henchmen were a result of the State party[...] but this does not deny something equally valid: the decision to send them to jail. Yes, there are still bandits roaming free, but this does not disqualify the fact that criminals as bad as *La Quina* and his henchmen are now in jail.<sup>12</sup>

The two previous quotes show that the arrest was indeed seen as legally appropriate, and desirable. *La Quina* had been denounced before for a number of illegal activities, such as embezzlement, kidnapping, and even murder. Hence, the same accounts that portray the arrest as authoritarian seem to recognize the lawfulness of the arrest.

How can we analyze what these sources in terms of veracity or popularity of similar opinions? Surely under authoritarianism, what ended up published in newspapers would have passed through some type of censorship or self-censorship. This criticism is fair, yet I have three reasons to believe that the accounts are relevant for this analysis. Firstly, as scholars of the authoritarian system in Mexico have claimed “a wide range of ideological perspectives and a certain amount of criticism ‘within the system’ were tolerated, even encouraged[...]” (Lawson, 2002). Secondly, the bias on the publications should be skewed towards the government, and the fact that they were able to publish these articles claiming that such a move legitimized an administration, thus accepting that the administration lacked popular support, show that the government indeed allowed the publication of

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12. “[...] Hernández Galicia y sus secuaces fueron obra del partido del estado [...] pero esta realidad no invalida otra igualmente cierta: la decisión de mandarlos a la cárcel. Sí, afuera quedan muchos bandidos, pero eso no descalifica el hecho de que criminales del calibre de La Quina y sus secuaces están hoy en la cárcel.” Pérez Gay (1989)

[certain] critical interpretations of their actions. Finally, and more importantly, these narratives about what had happened to *La Quina* continued to repeat themselves, even after Carlos Salinas had left the presidency, and after the PRI was ousted by the opposition.

Furthermore, even if the narratives had been truly crafted by pro-government journalists, we would expect the case to be reinterpreted, challenged and changed once the regime lost its force. Yet journalists often contextualize any news related to *la Quina* by referring to the sting as a way to boost Salinas' popularity after the massive fraud that plagued the electoral process (Torres, 2013). When the arrest is referenced in similar events, a frequent occurrence, its narrative remains almost unchanged. For example, during the detention of Elba Esther Gordillo, described at the beginning of this paper, the leader of the opposition (Andrés Manuel López Obrador, AMLO) tweeted: "Looking for legitimacy, the corrupt EPN [Enrique Peña Nieto] resorts to a *quinazo* against his former partner [Elba Esther]..." ADNPolítico (2013). I take AMLO's tweet to signal that Peña Nieto wanted to boost his popularity by jailing Elba Esther, an undesirable public figure equivalent to *La Quina*.

### 5.2.2 *Scandals of unruliness*

If the *quinazo* is taken as an example of an executive consolidating his power through a spectacular detention of political opponents, the *michoacanazo* is usually told as a story of a weak executive trying to rule. The *michoacanazo* refers to the indictment of 38 politicians in the state of Michoacán by the administration of President Felipe Calderón starting in May of 2009. These politicians included municipal presidents, state employees, and more importantly, it included Julio César Godoy Toscano, the half sibling of the sitting governor of Michoacán Leonel Godoy Rangel. Godoy Toscano was not arrested: in July of that year he won a seat on the federal legislature, a post that offers immunity from prosecution and a state judge granted him protection (*amparo*) so that he could be sworn in.

The *michoacanazo* operation took place two decades after the arrest of *La Quina*, and in a very different political and institutional context. The decade of 1990 witnessed a se-

ries of institutional and political transformations that paved the way for the 2000 elections in which the PRI was finally ousted. In 1994, Congress approved a judicial reform that granted unprecedented independence to the judicial system,<sup>13</sup> which had been a fundamental arm of the ruling and coercive apparatus of the PRI. The reform accomplished the effective independence of judges by creating an organ that would regulate the access to the judiciary (*Consejo de la Judicatura Federal*). Such organ is composed of 7 counselors (*consejeros*), and only one of them is chosen by the President. The judicial reform is considered a breakpoint in the ruling party dominance of the judiciary branch because it enabled the judiciary to act as a check on the executive power by granting the Supreme Court the ability to reverse constitutional decisions made by the president (Ríos-Figueroa, 2007).

In addition, a series of electoral reforms implemented in the decade of the 1990s allowed political competition to gain meaningful political spaces. Of special importance is the 1994 reform that changed the structure of the Federal Electoral Institute (*Instituto Federal Electoral* or IFE) so that citizens would organize and make decisions regarding the electoral process, instead of the president or his party. Perhaps nothing summarizes best the effect of this reform than the first few sentences of an article published in 1997, just months after the first mid-term elections conducted by this new electoral institute:

Mexico's 1997 midterm elections promise to democratize Mexico's autocratic and centralized presidentialist regime and thereby change Mexican politics profoundly. The electoral blow dealt the Institutional Revolutionary Party (*Partido Revolucionario Institucional, or PRI*) by voters on July 6 brings an elected mayor to the world's largest city, places more non-PRI governors into Mexican state houses assuring that demands for decentralization will intensify, and

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13. Some scholars view the 1994 reform as fundamental in preparing the fall of the PRI. Specifically, Finkel (2005) argues that the reform was proposed because the PRI was already anticipating its loss in the polls, and wanted to prevent the opposition from using it against its members. This view, however, is not shared by all: Inclán Oseguera (2009) argues that giving independence to the judicial power responds more to the need of the PRI to provide some legitimacy to the already discredited Supreme Court.

takes from President Ernesto Zedillo the congressional basis for the six-year dictatorship that the Mexican presidency has been since the 1930s.<sup>14</sup>

In 1997 the PRI lost the absolute majority in Congress, and a substantial amount of governorships to the opposition. Finally, in 2000 the candidate from the conservative opposition party PAN (*Partido Acción Nacional*), Vicente Fox, ran a successful campaign against the PRI and won by a landslide. Six years later, the PAN led by Felipe Calderón won again the presidency, this time by a much narrower margin that created a post-electoral conflict between the PAN and the left-wing party PRD, a conflict that dissipated over the next year. It is in this context of meaningful political fragmentation and judicial independence that the second case, the *michoacanazo*, occurs in.

The reason for the *michoacanazo* arrests was that the officials had ties with *La Familia Michoacana*, a powerful Michoacán-based cartel. By then, the war on drugs was well underway, and the violence was slowly moving from places like Ciudad Juárez to other areas, Michoacán being one of them.<sup>15</sup> In this context, the allegations made by the federation that the state and municipal governments were colluded with drug dealers were believable: a survey conducted a few days after the sting reported that 78% of respondents had heard of the arrests, and 76% approved or somewhat approved of the operation (Presidencia de la República Mexicana, 2009). Even the PRD affiliated governor of Michoacán, Leonel Godoy, declared that the arrests had been legal but ‘politically incorrect,’ and that his government was ready to “turn the page” because the federal government and his state should not be in confrontation (García, 2009).

This agreement with the legality in which the detentions had occurred was echoed in newspapers the next day, albeit with some reservations. An editorial in the national newspaper *El Universal* published the day after the arrests says that the detentions are,

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14. Klesner (1997)

15. For example, just a few months before the arrest, during the celebration of independence in September 2008, two explosive grenades had been thrown to the main plaza where people were gathered after hearing the traditional *grito* which celebrates the independence (Ramos, 2009). The grenades killed 8 and injured over 130 people, and no criminal organization took responsibility for the actions (Gómez, 2008).

by themselves, “an unprecedented action against narcotrafficking” yet it also claimed that the office of the attorney general would have to build solid cases “to prove the legal basis of this action and to clear away all political suspicions given the electoral context in which the elections occurred.”<sup>16</sup>

The electoral motive resonated with the citizens. After all, the arrests happened in May, two months before the federal intermediate elections in July. In addition, Michoacán held a special place for the administration: president Calderón was born in Morelia, the capital of the state, and his sister Luisa María was back then in charge of the electoral area of Calderón’s party PAN. A few days after the arrests, a journalist wrote a column that began by saying that “[i]t would be regrettable and unforgivable if the government were using Michoacán [...] as a factor to influence elections. The arrests nowadays confirm that the narco-politics are among us.”<sup>17</sup>

The quote shows how the narrative of the prosecution first takes the possibility of a manipulation of the law as a real possibility, ‘it would be... unforgivable’ while at the same time claiming that the detention shows the involvement of public officials with the organized crime: the detention confirms the narco-politics. Similarly to the *quinazo*, this quote shows that the legal detention is taken as a confirmation of the criminality of those involved.

As time went by and the cases against the public officials fell one by one for lack of evidence, the belief that their releases was due to the incapacity of the federal government to build a solid case were more and more common. Over a year later, a survey of the

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16. “[F]alta que la Procuraduría General de la República (PGR) elabore averiguaciones previas infalibles para demostrar el sustento legal de la acción y se despejen sospechas políticas por el contexto electoral en que las detenciones se dieron.” (Editorial, 2009)

17. Quote from (Solórzano, 2009). The term narco-politics, or *narcopolítica* refers to the phenomenon of the capture of state institutions, social programs, and bureaucratic apparatus by drug cartels. Although this term became more widely used with the recent war on drugs, it is not a recent phenomenon. Journalist Ioan Grillo: “Drug cartels are taking over chunks of the government apparatus, from local polices to city and state governments. Sometimes, they control the officials; other times cartel members themselves are the officials. I call it state capture. A student I talked to had a more visceral term for it: narco-politica or narco-politics.” (Grillo, 2014).

*michoacanazo* reported that 86% of the respondents agreed with the idea that those arrested were linked to organized crime but that the government did not find enough evidence to convict them, and when asked specifically about the governor's half brother Julio César, 47% of respondents said that they believed he had links with organized crime (Parametría, 2010). More interestingly however, the survey included a question that was worded:

Some people believe that the accusations against Julio César Godoy Toscano are made ultimately with the end of attacking the opposition party [*perredismo*] from Michoacán and to win the gubernatorial election next year. Some other people believe that the accusations leveraged against Julio César Godoy Toscano were true. With which of these two do you agree more?<sup>18</sup>

This survey exercise is not only relevant for its findings 17% believe that the accusations were an attack to the PRD, and 14% claimed that they agreed with both points of view, showing that at least one third of the respondents agreed with the existence of a political motivation. It is also relevant because it shows that the adjudication of self-serving motives in this case was common enough that it deserved to be included in a nationally representative survey. Mostly, these political motives were mentioned by the members of the PRD, who had claimed, for example, that the operation had been a show (*montaje*) with political purposes "other than fighting crime" (Sotelo García, 2010).

It is remarkable to observe that despite the differences in the institutions said to shape accountability practices, and the competitiveness of political conditions, both arrests are often narrated as leveling credible legal accusations, while also serving those in power. The fact that the narratives are very similar even when they occurred under different political institutions show that the introduction of democratic practices (electoral competition and judicial independence) does not always guarantee that corruption prosecutions

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18. Algunas personas piensan que las acusaciones en contra de Julio César Godoy Toscano por parte del gobierno federal tienen como fin atacar al perredismo michoacano y ganar la elección de gobernador del próximo año. Otras personas creen que las acusaciones en contra de Julio César Godoy Toscano por parte del gobierno federal son ciertas. ¿Usted con cuál de estas dos posturas está más de acuerdo? (Parametría, 2010)

will be considered an instance of accountability. The resemblance of the reactions is also surprising given the disparate outcomes of the judicial processes. Whereas *La Quina* was convicted and served a long sentence, those arrested in the *michoacanazo* were released shortly after. Thus, the attribution of an authoritarian political motivations does not seem to be a function of the outcome of the case, but of its onset.

### 5.3 Legacies of authoritarianism

The complexities of public reactions to corruption prosecution indicate that relying on a single measure, like trust in institutions, might overstate the effects that anticorruption measures exert on the relationship between citizen and their governments. Moreover, the cases presented here shows that current institutional theories lack explanatory power when connecting specific institutions that are supposed to enable and increase accountability to public reactions of what should theoretically be an instance of accountability. In light of the literature's expectations, the resilience of the narrative across institutional setting is quite perplexing. This begs the questions, what explains the similarity of the reactions? In this section I suggest that authoritarian events might shape how citizens understand other episodes after transition, showing that events can persist as authoritarian legacies in the form of political memory and language.

The comparative politics literature has long recognized that democratization does not mean a clean slate for a new political system to take place. Scholars have noted that pre-existing institutions, and political culture can shape how politics are organized after a transition to democracy (Pop-Eleches, 2007; Hagopian, 1993). This paper is specifically interested in the authoritarian political qualities that endure after transition, preventing the strengthening of democratic practices (Hite & Cesarini, 2004, chapter 1). In this sense, the argument I present here resonates with Pop-Eleches & Tucker (2011), who study former soviet republics and argue that citizens who experienced the widespread dissatisfaction

during the communist regime are highly unlikely to trust again in the government, even after its reformation.

I find evidence of legacies of the authoritarian regime in the referential aspect of corruption scandals. One of the most striking characteristic is the frequency with which arrests of high-level politicians are compared to *la Quina*. For example, when Elba Esther, the main character of the opening anecdote of this paper, was arrested, the media quickly called the sting the *elbazo*, similar modification than the *quinazo* and *michoacanazo*. Furthermore, the parallels between her detention and that of *la Quina's* was quick to appear:

Elba is eliminated. She died a political death and not precisely a warrior-like one. She has been transferred to the women's jail in Santa Martha Acatitla.

... [T]he [teacher's] union has not made any official statements. When *la Quina* was caught some predicted mobilizations and sabotages from the oil union.

Nobody moved.

We dare anticipate that the SNTE's [the teacher's union] grassroots will not move to defend she who is accused of embezzling the teacher's resources.<sup>19</sup>

The direct mention of the case of *la Quina* illustrates the referential aspect of prosecutorial scandals. Of course, an authoritarian legacy is not evidence by the mention of one case when recounting another. Instead, such mention should also perpetuate an authoritarian notion of the nature and function of a judicial prosecutions. Put differently, the mention should cultivate the authoritarian notion that a specific arrest is conducted specifically to reinforce the executive's power.

In this regard, perhaps the best example of *la Quina* as an authoritarian legacy is a statement pronounced in a round table of specialists (political scientists and sociologists)

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19. "Elba está liquidada. Murió políticamente y no precisamente como una guerrera. Fue trasladada a la cárcel de mujeres de Santa Martha Acatitla.

Al cierre de esta columna no se había manifestado oficialmente el SNTE. Cuando agarraron a La Quina se vaticinaban movilizaciones y sabotajes del sindicato petrolero.

Nadie se movió.

Nos atrevemos a vaticinar que las bases del SNTE tampoco se moverán para defender a quien está acusada de desviar los recursos de los maestros." Quote from Garfias (2013).

gathered to discuss Elba Esther's detention: "Salinas detained and jailed 'La Quina' because he did not support his campaign, and Enrique Peña Nieto did the same thing with Elba Esther[...] after such detentions, Salinas did not attack the oil union, nor did Peña Nieto attacked the SNTE [the teacher's union]."20 The reference to the *quinazo* has no other purpose than to illustrate how Elba's detention was aimed at punishing her as a political rival. The fact that Elba Esther was one of the most condemned public figures because of her corrupt practices seems to have no bearing on the authoritarian onset of the prosecution.

Although the *michoacanazo* was conducted under a democratic institutional setting, it is also frequently referenced to illustrate a weak executive ruling through authoritarian means. For example, when describing the arrest and subsequent release of Hipólito Mora, leader of a self-defense group in Michoacán, political analyst Ricardo Alemán writes:

The phantom of Felipe Calderón's failed *michoacanazo* – a high-profile case that resulted in generalized disapproval – haunts the government of Peña Nieto. And the evidence is there for anyone that wants to see it.

Before, it is worth remembering that when the federal government decided to act forcefully in Michoacán, the first argument ushered by the strategy operators was, precisely, that Peña Nieto's administration would not grope in the dark.

It was endlessly repeated that Peña's would not be a government of media blows, and that they would not lend themselves to improvisation and show-offs [*montaje*], alluding to the so-called *michoacanazo*, that ultimately became one of the biggest ridicules in Felipe Calderón's government. 21

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20. "Salinas detuvo y encarceló a 'La Quina', porque no lo apoyó en la campaña, y Enrique Peña Nieto hizo lo mismo con Elba Esther (Gordillo)... después de esas detenciones, ni Salinas golpeó al Sindicato Petrolero, ni Peña Nieto golpeó al SNTE." Lorenzo Meyer, reported in Aristegui Noticias (2013a).

21. "El fantasma del fallido michoacanazo de Felipe Calderón–duro golpe mediático que terminó en censura generalizada– ronda al gobierno de Enrique Peña Nieto. Y las evidencias están a la vista del que las quiera ver. Pero antes vale recordar que cuando el gobierno

In this specific instance the reference is obvious and central to the point that the author wants to make: that the detention of Hipólito Mora could also be considered a *michoacanazo* or a failed sting. More generally the term *michoacanazo* became a word to express a spectacular detention of someone who is then released for lack of evidence, often in the context of elections. For example, I found that the term is used as a reference in the detention of Jorge Hank Rhon, former Tijuana mayor and son of one of a prominent PRI leader. The Hank Rhon family has a long history of brushes with the law including his involvement in a murder case but, as Allen (2011) explains, “[h]e and his father have been surrounded by suspicion for decades but nothing has ever quite stuck.” Finally, in the early hours of June 5th 2011, he was arrested and accused of illegal possession of weapons (including 40 rifles, and a gas grenade). A popular online newspaper asked a number of political analysts whether the case built against him would crumble, and several referenced the *michoacanazo*. Furthermore, the president of the leftist party PRD most clearly depicted the exact same ambivalence that existed in the cases discussed above:

We are not in favor of a partial use of the federal institutions, and we are not taking the side of a character with such dubious reputation as Jorge Hank Rhon. He does not seem to be an innocent soul [*blanca palomita*]; but that is one thing and it is a different thing that the detention seemed to be linked and taken advantage of with reasons, objectives, and political pretensions.<sup>22</sup>

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federal decidió una acción contundente en Michoacán, lo primero que argumentaron los operadores de la estrategia fue, precisamente, que la gestión de Peña Nieto no daría ‘palos de ciego’. Se dijo hasta el cansancio que el de Peña no sería un gobierno de golpes mediáticos y que no se prestaría a la improvisación y al montaje, en alusión al llamado Michoacanazo, que se convirtió en uno de los mayores ridículos del gobierno de Felipe Calderón.” Alemán (2014). Interestingly, Ricardo Alemán is known for his somewhat a-critical views of the political establishment which makes these veiled criticism to Peña Nieto’s action against Hipólito Mora even more surprising.

22. “No estamos por un uso faccioso de las instituciones por parte del Gobierno federal, ni tampoco poniéndonos de lado de personajes de dudosa reputación como Jorge Hank Rhon. Blanca palomita no parece ser; pero una cosa es ésta y otra es que justamente el hecho pareciera ser vinculado y aprovechado con razones, objetivos y pretensiones políticos.” Mejía (2011).

This statement was followed by a reference to the operation conducted in Michoacán, claiming that the closeness of the arrest and the elections could not be a coincidence (Mejía, 2011).

Finally, the referential aspect need not be obvious or open for it to be present. In a more subtle way, the reference can be seen in the addition of the suffix *azo* to the names of those arrested. The addition of *azo* to a noun (*La Quina, Michoacán*) denotes the idea of punching, or hitting. Although the shared reference of a hit might seem superficial at first, it is nonetheless relevant to note the parallel of the use of this particular suffix with one of the most enduring authoritarian institutions in Mexico, the *dedazo*. The *dedazo* was the informal institution by which the next president was imposed by the outgoing executive Langston (2006). I argue that similarly to a *dedazo*, the addition of the *azo* suffix suggests an authoritarian hit and not necessarily an authority hit. Thus, in the same way that *La Quina* became the symbol of the arrest that consolidates power through showing it, the *michoacanazo* is now an example of a weak executive that orchestrates spectacular detentions precisely because he lacks authority. Despite the different meanings and implications of authority imbued in the two cases depicted here, what remains is the political, and more specifically, authoritarian, use of prosecution.

Thus, legacies of political institutions or practices can shape the expectations or behavior of citizens and elites, which in turn shapes the possibilities of democratization or democratic consolidation. The cases presented here show that authoritarian events can work in very similar ways, by guiding citizens' understandings of the political implication of judicial prosecutions. These events can have enduring effects, and can endure even decades after transition to democracy. Of course, this is not to say that legacies are deterministic. Rather the point is here to acknowledge that certain events, just as institutions and practices, can have long-lasting imprints in the political memory of citizens. Of course, the grim conclusion is that it is precisely in contexts where these legacies thrive the

ones that desperately need to hold politicians accountable to break the disenchantment of citizens with their government.

## 5.4 Conclusion

The chapters analyzed in this paper has argued that considering a prosecution lawful and desirable can co-exist with the idea that that same prosecution is an authoritarian move. I illustrate my argument using two cases of prosecution in Mexico that took place in different political environments, yet their accounts in media outlets share some very remarkable characteristics: in both cases the acknowledgement of legality was paired with the adjudication of self-serving motives of the incumbent.

I conclude this chapter by suggesting to move away from the assumption that lawfully prosecuting a corrupt politician constitutes an instance of accountability. As this chapter has argued, citizens require more than an arrest to consider that an act of justice is performed, even when lawfully conducted and desirable. This ties unto the discussion of regime type as well: the cases presented here show that political memory is not easily modified by reforming institutions, and that even in contexts of institutional democracy, punitive approaches to corruption control might be insufficient. If, as Robertson (2010) argues, “the quality of democracy is equivalent to the degree to which citizens control their rulers or alternatively the strength of linkages between citizens and policy-makers” (p.31), then these reactions are quite revealing about the quality of democracy, perhaps even more than the prosecutions themselves.

## CHAPTER 6

### CONCLUDING REMARKS

This dissertation argues that current literature on accountability and corruption prosecution posits a stark contrast between democracies and authoritarianisms, one that seems unjustified on the face of current patterns of disenchantment with democracy. In light of this disconnect, this dissertation asks: is corruption prosecution different across regime types? When and how are politicians investigated and held accountable? What are the politics behind the investigation of corrupt politicians? And finally, what are the consequences of these patterns of prosecution? I answered these questions in three interventions, each of which contributes to the literature in a particular way.

First, I develop a game theoretical model to explain prosecution of corruption at high levels of government. Building from existing research that acknowledges the importance of institutions and political competition, I propose to conceptualize prosecution as one of the ways in which incumbents curb opposition. This conceptualization follows existing explanations in the literature of authoritarian control, but it departs from the study of prosecution in democratic settings, where it is often thought of as a way in which the opposition controls the incumbent. The model's results show that prosecution in democracy should be more frequent, but that this can be attributed to the fact that Executives in democracies lack alternative, and less public, means to eliminate opponents.

In a second contribution, I test the implications derived from the game theoretical model. For this, I use a unique dataset of governors in Mexico that exploits subnational variation in relevant regime characteristics, and observes prosecution at the individual level. The quantitative analysis shows that executives in democratic states investigate more frequently than executives under authoritarianism. In addition, investigations are more frequent against members of different parties. These results are robust even after controlling for corruption scandals.

My third contribution is theoretical. I study two cases in Mexico where corrupt members of the political elite were arrested. These cases occurred in should be considered an instances of accountability, yet the public received them with an ambivalence for which we still lack a theoretical explanation. The narratives surrounding these detentions suggests that the effects of punitive institutions should not be taken for granted, as they can further alienate citizens from their governments by associating legal corruption prosecution with a despotic use of governmental institutions. This adds to the idea that corruption not only damages democracy through the privatization of what is public Warren (2004) but also through weakening the links between citizens and the institutions in charge of punishing abuses.

These findings present a somewhat grim picture for consolidating democracies. On the one hand, the formal model and the quantitative analysis suggest that Mexico does not prosecute corrupt politicians *enough*. On the other, the final chapter argues that on those occasions that corrupt politicians are arrested, the surrounding narrative is one of authoritarianism and not of accountability. These findings beg the question: besides the mere existence of democratic institutions, what can engender accountability in young democracies? A possible answer lies in the action of independent prosecutors who might be politically able to bring corrupt politicians to justice regardless of partisan considerations.

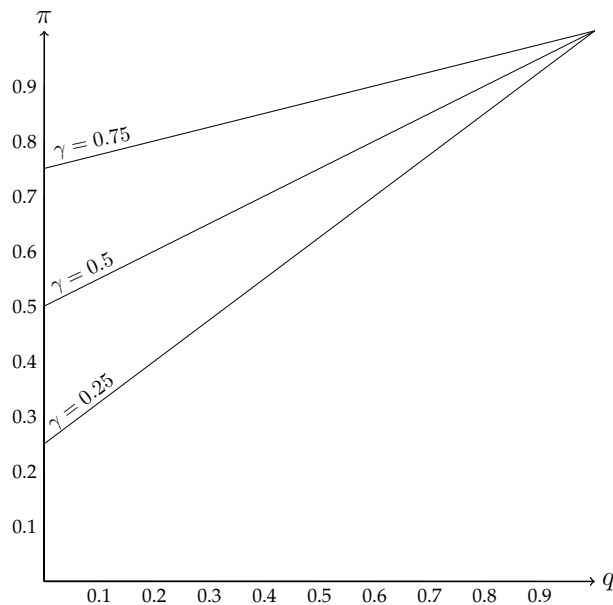
I finalize by suggesting that the effects of punitive institutions should not be taken for granted, as they can further alienate citizens from their governments by associating lawful corruption prosecution with a despotic use of governmental institutions. This suggestion runs parallel to the argument that the appearance of corruption is just as bad as corruption (SCOTUS, 2014, esp. Justice Breyer's dissenting opinion), and propose that the perception that justice is being manipulated can be just as bad as the open coercive use of the judicial branch, at least in the consequences that it has for citizens. After all, what citizens think that institutional processes do is also a fundamental part of the relationship between an individual and a polity.

## APPENDIX A

### FORMAL MODEL

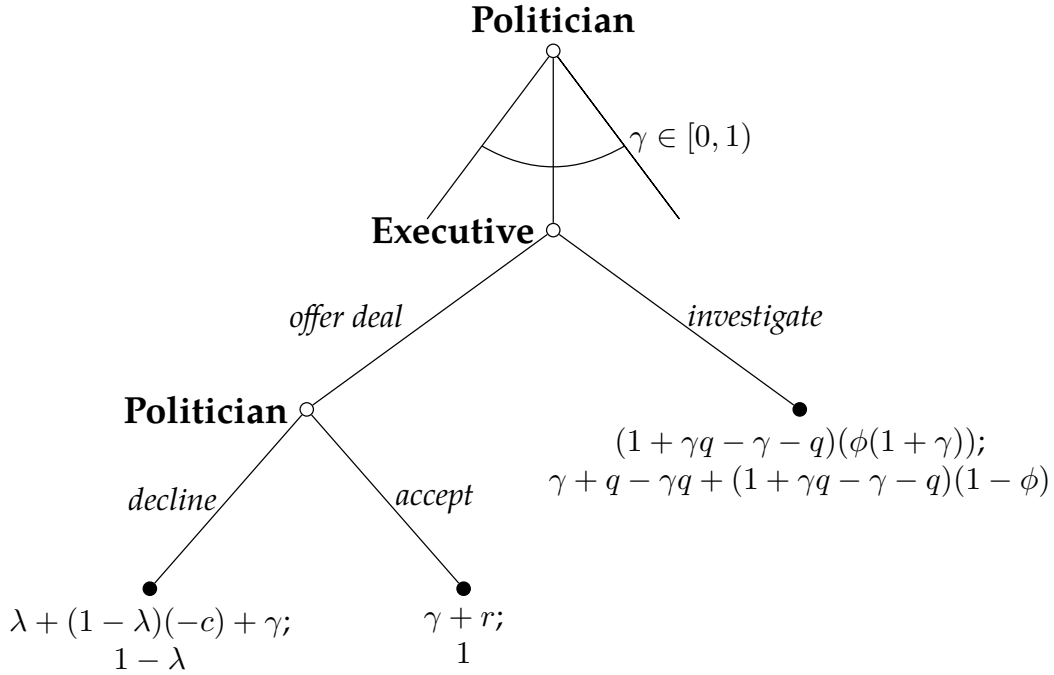
The basic model in extended form is depicted in figure 3.1. To simplify it, I propose that  $\pi$ , the probability with which the Politician will be placed in jail if an investigation occurs depends on the stolen quantity  $\gamma$ , and on the the control that the Executive has over an institutionalized judiciary. Specifically, I propose to capture the control that the Executive has over an institutionalized judiciary with a parameter  $q \in (0, 1)$ , where  $q = 0$  shows an independent judiciary, and when  $q$  approaches positive 1it indicates a larger control of the judiciary. To see how this is translated, I propose that  $\pi = \gamma + q - \gamma q$ . Next plot shows the probability  $\pi$  according to varying parameters of  $\gamma$  and  $q$ :

Figure A.1: Probability that Politician will be eliminated from competition



As can be seen, the higher  $q$  and higher  $\gamma$  indicate more probability of being eliminated. Hence, the model can be re-written in figure A.2

Figure A.2: Formal model in extensive form when  $\pi = f(q, \gamma)$



### A.1 Formal setup of the model

- Players:  $\{Executive, Politician\}$
- Strategy sets for each player:
  - $S^P = \{a_1^P, a_2^P\}$  where  $a_1^P \in [0, 1)$  and  $a_2^P = \{accept, decline\}$
  - An example of a strategy for  $E$ ,  $S^E$  is a function that assigns an action in  $\{offer\ deal, investigate\}$  to any value of  $[0, 1)$ . Written as:  
 $S^P : [0, 1) \rightarrow \{offer\ deal, investigate\}$ .
- Utilities in terms of outcomes:
  - $U^P(\gamma^*, od, d) = \lambda + (1 - \lambda)(-c) + \gamma$
  - $U^P(\gamma^*, od, a) = \gamma + r$

- $U^P(\gamma^*inv) = (1 + \gamma q - \gamma - q)(\phi(1 + \gamma))$
- $U^E(\gamma^*,od,d) = 1 - \lambda$
- $U^E(\gamma^*,od,a) = 1$
- $U^E(\gamma^*,inv) = \gamma + q - \gamma q + (1 + \gamma q - \gamma - q)(1 - \phi)$

## A.2 Best responses

If offered a deal, the Politician will accept when:

$$\gamma + \lambda \geq \lambda + (1 - \lambda)(-c) + \gamma$$

Which can be further simplified to: (A.1)

$$c \geq c^* = \frac{\lambda - r}{1 - \lambda}$$

Note that we want for  $0 < c^* \leq 1$ , for which:

$$0 < \frac{\lambda - r}{1 - \lambda} \leq 1$$

$$r < \lambda \leq \frac{1 + r}{2}$$

Thus we can state the next restrictions:

$$r < \lambda \tag{R1}$$

And:

$$\lambda < \frac{1 + r}{2} \tag{R2}$$

If  $c > c^*$ , then the Executive can offer a deal knowing that it will be accepted, or he can initiate prosecution. He will offer a deal when:

$$1 > \gamma + q - \gamma q + (1 + \gamma q - \gamma - q)(1 - \phi)$$

Which can be further simplified to: (A.2)

$$1 > q; \text{ which is always}$$

If, on the other hand,  $c < c^*$ , the Executive can offer a deal knowing that it will be rejected or he can initiate prosecution. He will offer a deal when:

$$1 - \lambda > \gamma + q - \gamma q + (1 + \gamma q - \gamma - q)(1 - \phi)$$

Which can be further simplified to: (A.3)

$$q < 1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1 - \gamma)}$$

With this, we can see the next results in the next diagram:

### A.2.1 Choosing $\gamma$

From figure A.2 we can see that when  $c > c^*$ , the Politician will choose a  $\gamma^*$  that maximizes the utility from being offered a deal and accepting it.

$$\gamma^{*;c>c^*} = \max(EU^{P;\gamma,od,d})$$

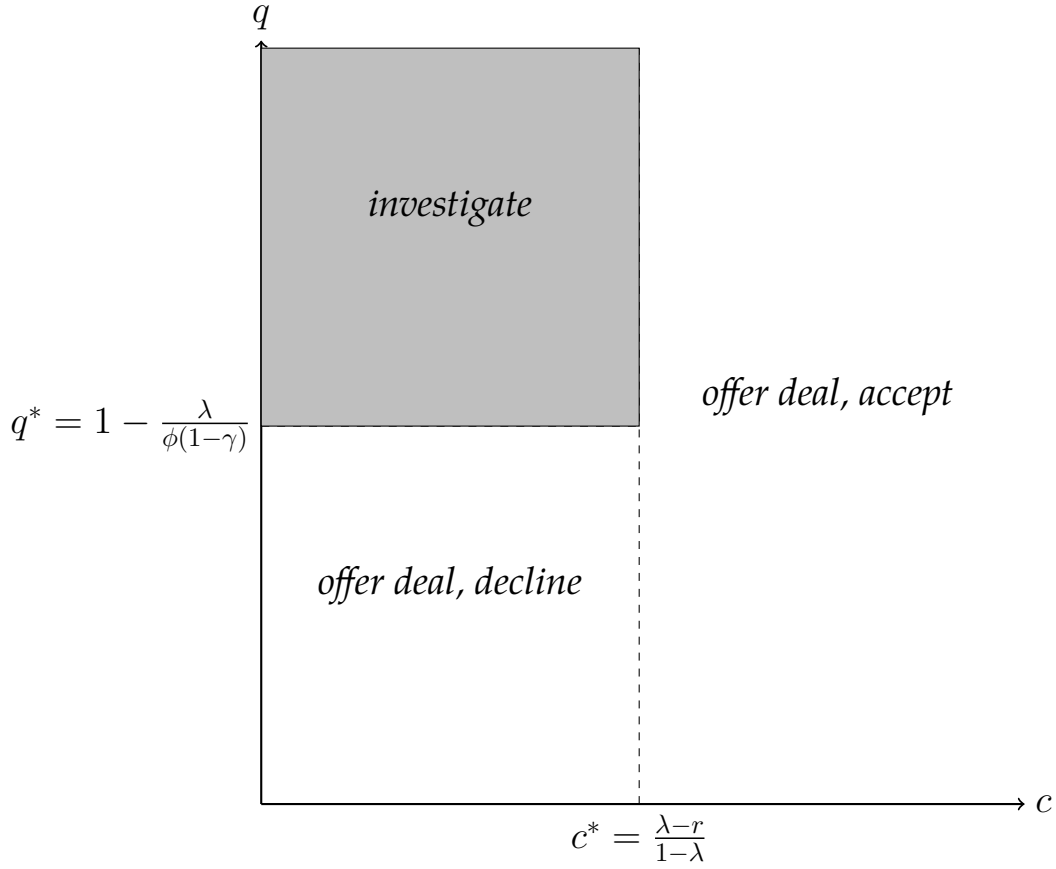
$$\text{And: } EU^{P;\gamma,od,d} = \gamma + r$$

(A.4)

Which means:  $\max(\gamma)$ , and given that  $\gamma \in (0, 1)$

$$\gamma^{*;c>c^*} \Rightarrow 1$$

Figure A.3: Outcome of the model in terms of  $c$  and  $q$



When  $c < c^*$ , the Politician's expected utility is defined as:

$$\begin{aligned}
 EU^{P;\gamma,inv} + EU^{P;\gamma,od,d} &= \underbrace{c^* q^* U^{P;\gamma,inv}}_{EU^{P;\gamma,inv}} + \underbrace{c^* (1 - q^*) U^{P;\gamma,od,d}}_{EU^{P;\gamma,od,d}} \\
 &= c^* [q^* U^{P;\gamma,inv} + (1 - q^*) U^{P;\gamma,od,d}]
 \end{aligned} \tag{A.5}$$

Which means that the politician must choose a  $\gamma^+$  such that:

$$\begin{aligned}
 \gamma^{+;c < c^*} &= \max[EU^{P;\gamma,inv} + EU^{P;\gamma,od,d}] \\
 &= \max(c^* [q^* U^{P;\gamma,inv} + (1 - q^*) U^{P;\gamma,od,d}])
 \end{aligned} \tag{A.6}$$

Taking the derivative of A.5 with respect to  $\gamma$  and setting it equal to zero yields:

$$c_\gamma^*[q^*U^{P;\gamma,inv} + (1 - q^*)U^{P;\gamma,od,d}] + c^*[q^*U^{P;\gamma,inv} + (1 - q^*)U^{P;\gamma,od,d}]_\gamma = 0$$

We know that  $c_\gamma^* = 0$

$$c^*[q^*U^{P;\gamma,inv} + (1 - q^*)U^{P;\gamma,od,d}]_\gamma = 0$$

Rearranging  $c^*$  and expanding:

$$q_\gamma^*U^{P;\gamma,inv} + q^*U_\gamma^{P;\gamma,inv} + (1 - q^*)_\gamma U^{P;\gamma,od,d} + (1 - q^*)U_\gamma^{P;\gamma,od,d} = 0 \quad (\text{A.7})$$

And we also know:  $(1 - q^*)_\gamma = -q_\gamma^*$ ; and  $U_\gamma^{P;\gamma,od,d} = 1$

$$q_\gamma^*U^{P;\gamma,inv} + q^*U_\gamma^{P;\gamma,inv} - q_\gamma^*U^{P;\gamma,od,d} + 1 - q^* = 0$$

$$q_\gamma^*(U^{P;\gamma,inv} - U^{P;\gamma,od,d}) + q^*(U_\gamma^{P;\gamma,inv} - 1) + 1 = 0$$

Since  $q_\gamma^* = \frac{\lambda}{\phi}(\frac{1}{(1-\gamma)^2})$  and  $U_\gamma^{P;\gamma,inv} = 2\phi(q-1)\gamma$ , we can further expand this term:

$$\frac{\lambda}{\phi} \left( \frac{1}{(1-\gamma)^2} \right) \left( \overbrace{((1 + \gamma q - \gamma - q)\phi(1 + \gamma))}^{U^{P;\gamma,inv}} - \overbrace{[\lambda + \lambda c - c + \gamma]}^{U^{P;\gamma,od,d}} \right) + \left( 1 - \frac{\lambda}{\phi(1-\gamma)} \right) \left( \overbrace{(2\phi(q-1)\gamma - 1)}^{U_\gamma^{P;\gamma,inv}} \right)$$

And further simplify:

$$\frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)^2} (\phi(\gamma^2 q - \gamma^2 - q + 1) - [\lambda + \lambda c - c + \gamma]) + \left( 1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)} \right) (2\phi(q-1)\gamma - 1) \quad (\text{A.8})$$

We can see from the equation above that  $\gamma^+$  depends on a number of factors. To simplify the equilibrium analysis, I establish the maximizing condition for three values of  $q$ :  $q = 0$ ,  $q = 0.5$ , and  $q = 0.75$  and conduct a series of simulations with varying values of  $\lambda$  and  $\phi$ . The simulations are reported on figures consisting of 9 panels, all of which graph the expected utility of the Politician in the vertical axis<sup>1</sup> as a function of  $\gamma$ , depicted in the horizontal axis. For each panel, the  $\gamma$  that yields the higher expected utility is identified

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1. Expected utility when  $c < c^*$ , reported in equation A.5

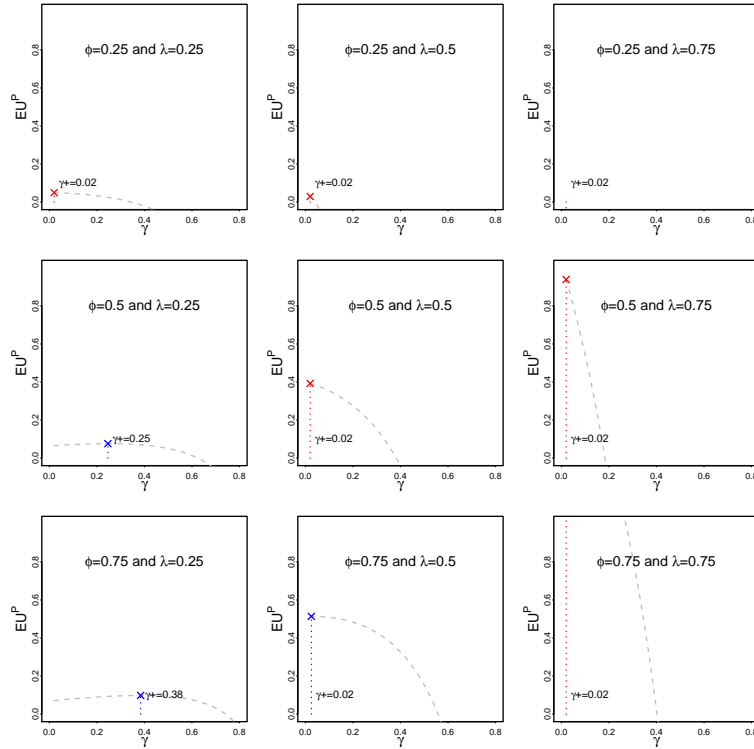
(this is  $\gamma^+$ ). When the marker is blue,<sup>2</sup> it identifies a deal offered and rejected, and red markers identify investigations.

### A.2.2 $\gamma$ when $q = 0$

We can see that when  $q = 0$ , equation A.8 can be re-written:

$$\frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)^2} (\phi(1-\gamma^2) - [\lambda + \lambda c - c + \gamma]) + (1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)}) (-2\phi\gamma - 1) = 0 \quad (\text{A.9})$$

Figure A.4: Analysis of equilibria when  $c < c^*$  and  $q = 0$



This plot shows that when  $q = 0$ , the Politician in most cases will steal a little bit and will always be investigated. The only instances when the Politician is not investigated is, ironically, when he can be the object of an investigation and still be popular.

2. Marker is blue if  $q = 0 < q_{\gamma^+}^*$ . Since  $q < q_{\gamma^*}^*$ .

### A.2.3 $\gamma$ when $q = 0.5$

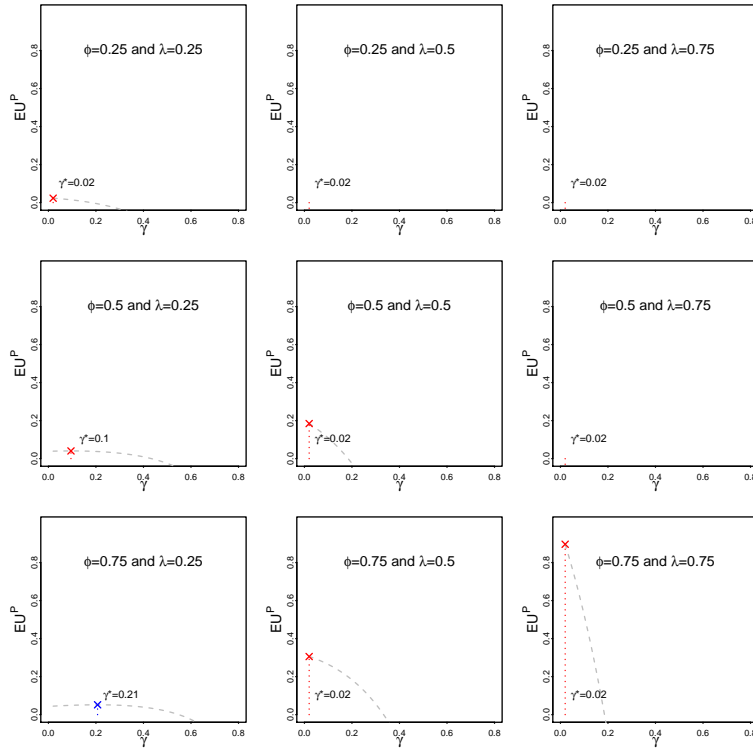
We can see that when  $q = 0.5$ , equation A.8 can be re-written:

$$\frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)^2} (\phi(0.5\gamma^2 - \gamma^2 + 0.5) - [\lambda + \lambda c - c + \gamma]) + (1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)}) (-\phi\gamma - 1) = 0$$

And further simplified:

$$\frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)^2} (\phi(0.5 - 0.5\gamma^2) - [\lambda + \lambda c - c + \gamma]) + (1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)}) (-\phi\gamma - 1) = 0 \quad (\text{A.10})$$

Figure A.5: Analysis of equilibria when  $c < c^*$  and  $q = 0.5$



### A.2.4 $\gamma$ when $q = 0.75$

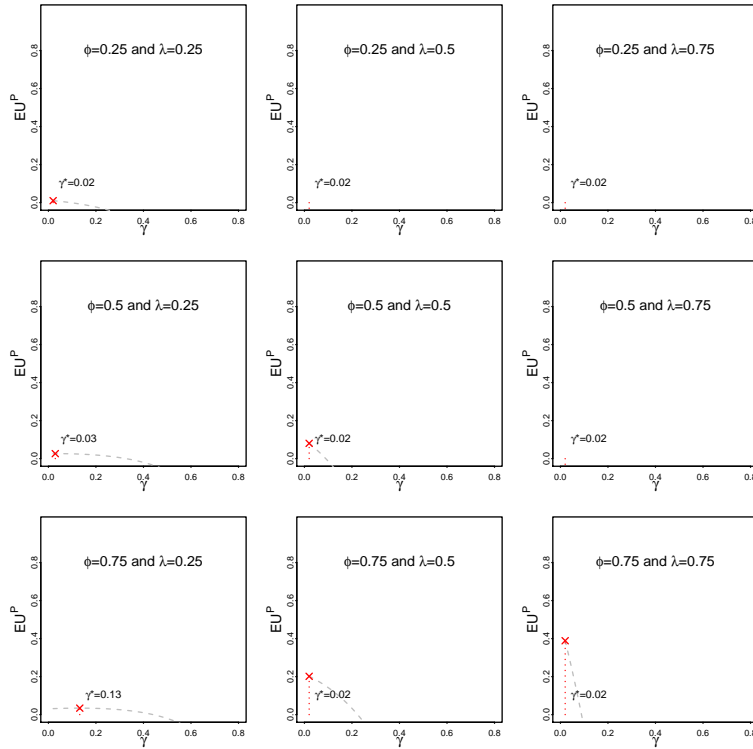
We can see that when  $q = 0.75$ , equation A.8 can be re-written:

$$\frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)^2} (\phi(0.75\gamma^2 - \gamma^2 + 0.75) - [\lambda + \lambda c - c + \gamma]) + (1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)}) (2\phi(-0.25)\gamma - 1) = 0$$

And further simplified:

$$\frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)^2} (\phi(0.5 - 0.5\gamma^2) - [\lambda + \lambda c - c + \gamma]) + (1 - \frac{\lambda}{\phi} \cdot \frac{1}{(1-\gamma)}) (-0.5\phi\gamma - 1) = 0 \quad (\text{A.11})$$

Figure A.6: Analysis of equilibria when  $c < c^*$  and  $q = 0.75$



### A.3 Comparative statics

We can now derive some comparative statics. Recall that the outcome of interest is the probability of observing an investigation, so I begin by defining the probability of investigation ( $Pr(inv)$ ) as the shaded area marked in figure A.2:

$$Pr(inv) = c^*(1 - q^*)$$

$$Pr(inv) = \left(\frac{\lambda - r}{1 - \lambda}\right)\left(\frac{\lambda}{\phi(1 - \gamma)}\right)$$

The first thing to note is that neither  $c$  nor  $q$  increase or decrease the probability of investigation, but rather they enable it. I proceed by estimating the effect of a change of each parameter in the probability of observing investigation:

#### A.3.1 Marginal effect of $r$ on area of prosecution:

The first derivative of the area with respect to  $r$  yields:

$$Pr(inv)_r = -\frac{\overbrace{\lambda}^{+}}{\underbrace{\phi}_{+} \underbrace{(\gamma - 1)}_{-} \underbrace{(\lambda - 1)}_{-}}$$

We know that  $\phi$ ,  $\lambda$ , and  $\gamma$  take on positive values between 0 and 1. Thus, the effect of  $r$  on the probability of prosecution is negative.

### A.3.2 Marginal effect of $\lambda$ on area of prosecution

The first derivative of the area with respect to  $\lambda$  yields:

$$Pr(inv)_\lambda = \frac{\overbrace{r}^+ + \overbrace{\lambda}^+ \overbrace{(\lambda - 2)}^-}{\underbrace{\phi(\gamma - 1)}_- \underbrace{(1 - \lambda)^2}_+}$$

As can be seen, the denominator of the derivative of the area with respect to  $\lambda$  is negative, and the numerator is positive when  $r > \lambda^2 - 2\lambda$ . Thus, the effect of  $\lambda$  on the probability of prosecution is positive when  $r < \lambda^2 - 2\lambda$  and negative otherwise.

### A.3.3 Marginal effect of $\phi$ on area of prosecution

The first derivative of the area with respect to  $\phi$  yields:

$$Pr(inv)_\phi = -\frac{\overbrace{\lambda}^+ \overbrace{(\lambda - r)}^+}{\underbrace{\phi^2}_+ \underbrace{(\gamma - 1)}_- \underbrace{(\lambda - 1)}_-}$$

The numerator of the first derivative with respect to  $\phi$  is always positive because of restriction R1, and the denominator is always positive. Thus, the effect of  $\phi$  on the probability of prosecution is negative.

### A.3.4 Marginal effect of $\gamma$ on area of prosecution

$$Pr(inv)_\gamma = - \frac{\overbrace{\lambda}^+ \overbrace{(\lambda - r)}^+}{\underbrace{\phi}_+ \underbrace{(1 - \gamma)^2}_+ \underbrace{(\lambda - 1)}_-}$$

From the expression above we can see that the numerator is always positive, and the denominator is always negative. Since the expression is multiplied by a  $-1$ , the effect of  $\gamma$  on the probability of investigation is positive.

## APPENDIX B

### EMPIRICS AND DATASET

The full dataset includes every governor starting with those who were in power in 1990, and ending with those that were in power by June 2016. Table B.1 shows the number of governors per state, and on whether they were elected, interim, or substitute governors. Interim governors (*gobernadores interinos*) are those who are called mid-term to serve for a period of time shorter than the full term (i.e. until the old governor takes the post back or elections are called sooner than expected). Substitute governors (*gobernadores sustitutos*) are called mid-term to serve for the rest of the term.

Table B.2 shows the translation from parameters into variables.

Table B.1: Distribution of governors by type and state

State	Elected	Interim	Substitute
Aguascalientes	4	0	1
Baja California	4	0	1
Baja California Sur	5	0	0
Campeche	5	0	0
Chiapas	4	1	3
Chihuahua	4	0	0
Coahuila	4	1	0
Colima	6	3	0
Distrito Federal	3	2	0
Durango	4	0	0
Guanajuato	4	2	1
Guerrero	5	2	2
Hidalgo	4	0	1
Jalisco	3	0	2
Mexico	3	0	2
Michoacan	5	1	2
Morelos	3	1	1
Nayarit	4	0	0
Nuevo Leon	5	1	1
Oaxaca	4	0	0
Puebla	4	0	0
Queretaro	5	0	1
Quintana Roo	4	0	0
San Luis Potosi	4	1	0
Sinaloa	4	0	0
Sonora	3	0	0
Tabasco	4	2	1
Tamaulipas	4	0	0
Tlaxcala	4	0	1
Veracruz	3	1	0
Yucatan	3	1	0
Zacatecas	4	0	1

Table B.2: Operationalizing parameters of interest

Parameter	Concept	Variable and operationalization
$Pr(inv)$	Outcome: Probability of investigation	<i>official_investigation</i> : 1 if governor $g_{s,t}$ has been the center of an official investigation at the state level, 0 otherwise.
$c$	Regime type	<i>alternation</i> : 1 if governor $g_{s,t+1}$ governs after alternation, 0 otherwise. <i>fraction</i> : Fraction of state congress that is from the same party as governor $g_{s,t+1}$ . <i>fraction_over_50</i> : 1 if <i>fraction</i> is larger than $\frac{1}{2}$ , 0 otherwise. <i>fraction_over_66</i> : 1 if <i>fraction</i> is larger than $\frac{2}{3}$ , 0 otherwise.
$q$	Judicial structure	<i>judicial_control</i> : 1 if governor $g_{s,t+1}$ can interfere with the judicial structure, 0 otherwise.
$r$	Payoffs	<i>co-partisanship</i> : Co-partisanship between investigated and investigating governor.
$\gamma$	Underlying corruption	<i>corruption</i> Count of articles covering corruption-related news of governor $g_{s,t}$ plus one, logged.
$\lambda$ & $\phi$	Chances of victory	<i>log(margin)</i> : Margin of victory of governor $g_{s,t}$ , logged.

I conduct the empirical analysis in the full sample and in the sample of only pairwise elected governors. Tables B.3 and B.4 show the correlations between the variables in the full sample and in the sample of only pairwise-elected governors.

Table B.3: Correlation (elected only)

	<i>investigation</i>	<i>corruption</i>	<i>log(margin)</i>	<i>alternation</i>	<i>fraction</i>	<i>fraction_50</i>	<i>fraction_66</i>	<i>co-partisanship</i>	<i>judicial_control</i>
<i>investigation</i>	1								
<i>corruption</i>	0.05	1							
<i>log(margin)</i>	-0.3	-0.44	1						
<i>alternation</i>	0.36	0.28	-0.5	1					
<i>fraction</i>	-0.39	-0.34	0.45	-0.56	1				
<i>fraction_50</i>	-0.36	-0.24	0.38	-0.49	0.77	1			
<i>fraction_66</i>	-0.15	-0.24	0.29	-0.3	0.43	0.3	1		
<i>co-partisanship</i>	-0.29	-0.18	0.39	-0.66	0.47	0.36	0.2	1	
<i>judicial_control</i>	0.02	-0.33	0.14	-0.06	0.06	0.06	0.12	-0.07	1

Table B.4: Correlation (full sample)

	<i>investigation</i>	<i>corruption</i>	<i>log(margin)</i>	<i>alternation</i>	<i>fraction</i>	<i>fraction_50</i>	<i>fraction_66</i>	<i>co-partisanship</i>	<i>judicial_control</i>
<i>investigation</i>	1								
<i>corruption</i>	0.06	1							
<i>log(margin)</i>	-0.17	-0.33	1						
<i>alternation</i>	0.26	0.29	-0.43	1					
<i>fraction</i>	-0.28	-0.23	0.38	-0.53	1				
<i>fraction_50</i>	-0.28	-0.21	0.32	-0.45	0.75	1			
<i>fraction_66</i>	-0.11	-0.18	0.29	-0.34	0.52	0.32	1		
<i>co-partisanship</i>	-0.25	-0.08	0.32	-0.62	0.47	0.36	0.21	1	
<i>judicial_control</i>	-0.01	-0.24	0.15	-0.1	0.13	0.13	0.16	0.04	1

## B.1 Dependent variable

The main dependent variable of interest is the existence or not of a judicial process that targets the governor. For each governor, I coded 1 if he had been the main subject in an official investigation (*averiguación previa*) at the state level. I relied on newspaper reports to find instances of investigations. Judicial processes are often conducted in secrecy, so the most reliable source of information is the media. The coding rules were simple, the governor would be considered investigated if a newspaper reported an official investigation opened against him or her at the state's level. In addition, the investigation had to be related to his actions in office. Table B.5 shows investigations by party of governor.

It is important to note that these are not the entirety of investigations of governors. Many of the governors that are judicially investigated are done so by the federal level, either by the Office of the Attorney General (*Procuraduría General de la República*), or by special tribunals and commissions.

Table B.5: Official investigation by party of investigated governor

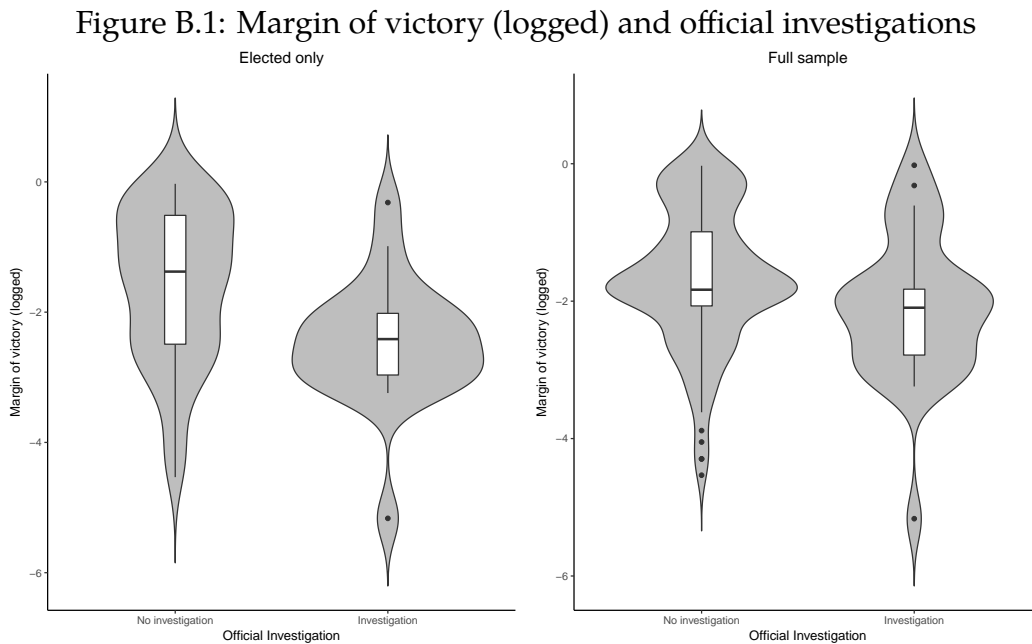
	Not investigated	Investigated	Total
Independent	4 (80%)	1 (20%)	5 (100%)
PAN	18 (66.7%)	9 (33.3%)	27 (100%)
PRD	13 (76.5%)	4 (23.5%)	17 (100%)
PRI	104 (86.7%)	16 (13.3%)	120 (100%)
Total	139 (82.2%)	30 (17.8%)	169 (100%)

## B.2 Margin of victory

I define margin of victory of governor  $g_{s,t}$  as:

$$\text{margin}_{g,s,t} = \frac{v_{.01}g_{s,t} - v_{.02}g_{s,t}}{v_{.01}g_{s,t} + v_{.02}g_{s,t}} \quad (\text{B.1})$$

Where  $v_{.01}g_{s,t}$  are the votes received by winner (governor  $g$ ) when  $g$  was elected and  $v_{.02}g_{s,t}$  are the votes received by second place when  $g$  was elected. The margin of victory is, then, the difference between first and second place as a ratio of the total votes received by these two parties. Since not all the governors were elected, there is a considerable amount of missing values. For these, I inputted the global mean.



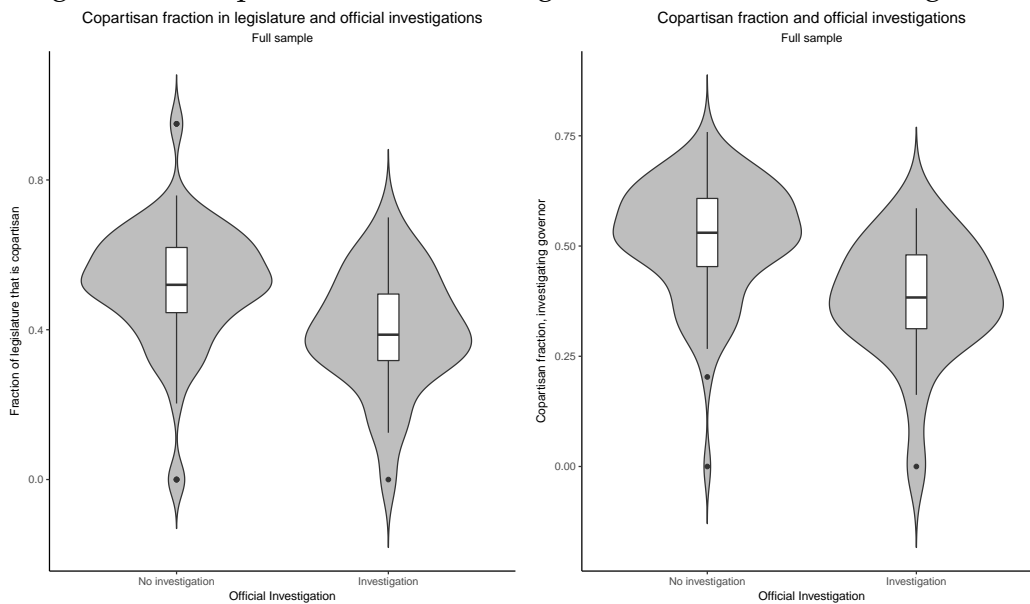
### B.3 Alternation

Table B.6: Official investigations by alternation (elected only)

	Not investigated	Investigated	Total
No alternation	47 (94%)	3 (6%)	50 (100%)
Alternation	33 (64.7%)	18 (35.3%)	51 (100%)
Total	80 (79.2%)	21 (20.8%)	101 (100%)

### B.4 Fraction in legislature

Figure B.2: Co-partisan fraction in legislature and official investigations



### B.4.1 Fraction over 50

Table B.7: Official investigations by copartisan fraction (elected only)

	No investigated	Investigated	Total
Fraction under 50%	33 (64.7%)	18 (35.3%)	51 (100%)
Fraction over 50%	47 (94%)	3 (6%)	50 (100%)
Total	80 (79.2%)	21 (20.8%)	101 (100%)

### B.4.2 Fraction over 66

Table B.8: Official investigations by copartisan fraction (elected only)

	Not investigated	Investigated	Total
Fraction under 66%	72 (77.4%)	21 (22.6%)	93 (100%)
Fraction over 66%	8 (100%)	0 (0%)	8 (100%)
Total	80 (79.2%)	21 (20.8%)	101 (100%)

## B.5 Co-partisanship

Table B.9: Official investigations by partisanship of governors (elected only)

	Not investigated	Investigated	Total
Same party	19 (61.3%)	12 (38.7%)	31 (100%)
Different party	61 (87.1%)	9 (12.9%)	70 (100%)
Total	80 (79.2%)	21 (20.8%)	101 (100%)

## B.6 Judicial independence

Table B.10: Official investigations by judicial control (elected only)

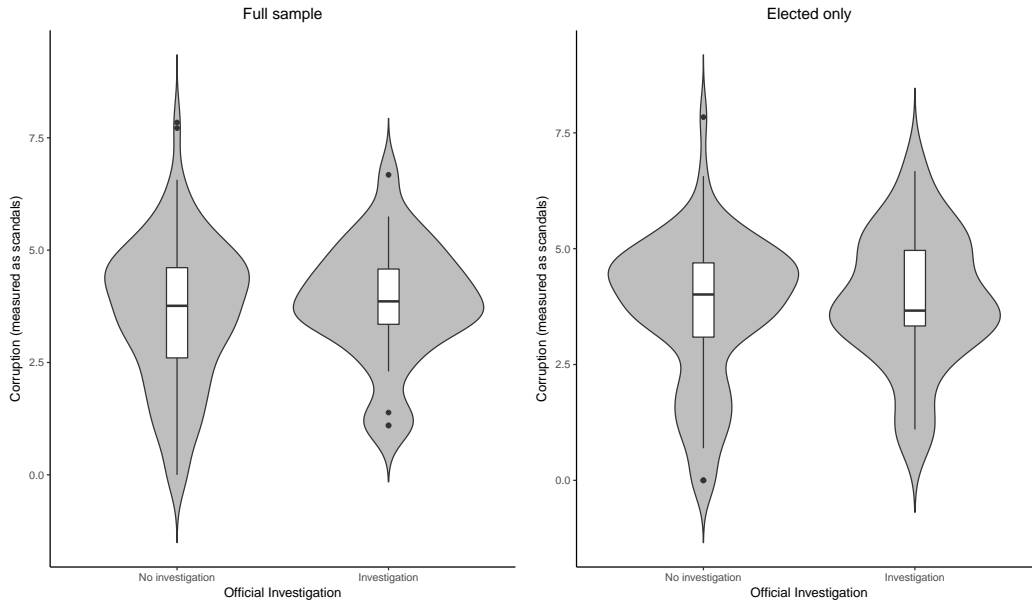
	Not investigated	Investigated	Total
No judicial control	25 (80.6%)	6 (19.4%)	31 (100%)
Judicial control	55 (78.6%)	15 (21.4%)	70 (100%)
Total	80 (79.2%)	21 (20.8%)	101 (100%)

### B.6.1 Corruption scandals

In addition, I present a measure of corruption. For each governor, I looked up his or her name in the national newspaper *El Universal* along with three keywords: (1) *corrupción* (corruption,  $m\_corr_{g,s,t}$ ), (2) *enriquecimiento ilícito* (illicit enrichment,  $m\_enr_{g,s,t}$ ), (3) and *peculado* (graft,  $m\_bri_{g,s,t}$ ). I coded the number of mentions of these and created the next measure of corruption:

$$corruption_{g,s,t} = \log(m\_corr_{g,s,t} + m\_enr_{g,s,t} + m\_bri_{g,s,t} + 1) \quad (\text{B.2})$$

Figure B.3: Corruption and official investigations



## B.7 Logistic models with fixed effects by state

I estimate the same specifications from tables 4.2 and 4.3 and include a series of fixed effects by state, estimated using the package `lme4` by Bates *et al.* (2015). Specifically, the models take the form of:

$$\begin{aligned} \text{logit}(\text{Pr}(\text{inv}_{g,s,t})) = & \beta_s * \text{state}_{g,s,t} \beta_0 * \log(\text{margin}_{g,s,t}) + \beta_1 * \text{corruption}_{g,s,t} + \\ & \beta_d * \text{regime}_{g,s,t+1} + \beta_a * \text{regime}_{g,s,t+1} + e_{g,s,t} \end{aligned}$$

Where:  $\beta_s \sim N(\mu_{\beta_s}, \sigma_{\beta_s})$

In none of these model do I find evidence for state-fixed effects (all of the coefficients associated with each state are indistinguishable from 0), so I do not report them here. I also reproduce figure 4.1 using mode 5 of table B.12. The probabilities are predicted using bootstrapping with sampling from the observed data, so their confidence interval is smaller than the interval in figure 4.1.

Table B.11: Explaining investigations with regime as alternation (varying intercepts, elected only)

	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
<i>alternation</i>	-0.246*** (0.002)	0.758 (0.619)	0.414 (0.511)	1.427* (0.748)	1.087 (0.787)
<i>judicial_control</i>		-2.066*** (0.676)	-0.699 (0.583)	-0.510 (0.545)	-0.554 (0.562)
<i>co-partisanship</i>			-1.836*** (0.520)	-1.153* (0.593)	-1.158* (0.604)
<i>corruption</i>				-0.319* (0.178)	-0.513** (0.223)
<i>log(margin)</i>					-0.479 (0.304)
Observations	101	101	101	101	101
Log Likelihood	-62.385	-54.807	-47.024	-45.356	-44.025
Akaike Inf. Crit.	128.770	115.615	102.048	100.712	100.050
Bayesian Inf. Crit.	134.000	123.460	112.509	113.788	115.740

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

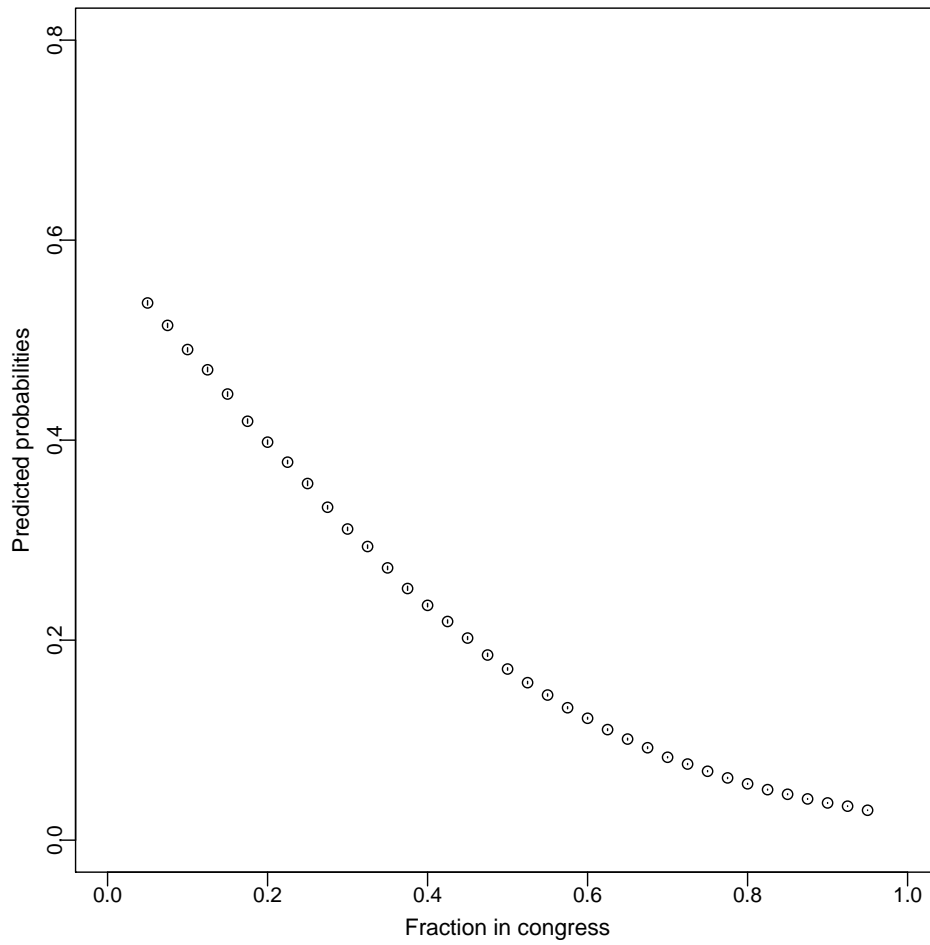
Table B.12: Explaining investigations with regime as fraction (varying intercepts, elected only)

	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
<i>fraction</i>	-3.577*** (0.862)	-4.645*** (1.407)	-3.474** (1.641)	-4.302** (1.915)	-4.431** (1.860)
<i>judicial_control</i>		0.733 (0.649)	0.645 (0.672)	0.543 (0.669)	0.343 (0.638)
<i>co-partisanship</i>			-0.852 (0.678)	-0.825 (0.668)	-0.538 (0.674)
<i>corruption</i>				0.126 (0.144)	-0.181 (0.203)
<i>log(margin)</i>					-0.626** (0.291)
Observations	101	101	101	101	101
Log Likelihood	-46.051	-45.343	-44.516	-44.117	-41.609
Akaike Inf. Crit.	96.102	96.686	97.032	98.235	95.218
Bayesian Inf. Crit.	101.332	104.532	107.492	111.310	110.909

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Figure B.4: Predicted probability by *fraction* (model 5)



## B.8 Logistic models with clustered standard errors by state

Table B.13: Explaining investigations with regime as alternation (clustered standard errors, elected only)

	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
alternation	2.145*** (0.632)	2.164*** (0.625)	1.942** (0.843)	2.066** (0.991)	1.811* (0.998)
judicial_control		0.272 (0.687)	0.215 (0.671)	0.149 (0.681)	0.225 (0.736)
co-partisanship			-0.348 (0.787)	-0.353 (0.765)	-0.210 (0.756)
corruption				-0.126 (0.247)	-0.299 (0.270)
log(margin)					-0.527** (0.257)
Constant	-2.752*** (0.552)	-2.954*** (0.808)	-2.562** (1.059)	-2.118** (0.959)	-2.522** (1.019)
Observations	101	101	101	101	101

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Table B.14: Explaining investigations with regime as fraction (clustered standard errors, elected only)

Logistic estimation					
	Model 1	Model 2	Model 3	Model 4	Model 5
fraction	-6.994*** (2.181)	-7.022*** (2.188)	-6.018** (2.647)	-6.495** (2.775)	-5.972** (2.795)
judicial_control		0.197 (0.649)	0.0891 (0.649)	-0.0753 (0.730)	-0.0656 (0.786)
co-partisanship			-0.721 (0.713)	-0.767 (0.699)	-0.543 (0.731)
corruption				-0.176 (0.215)	-0.342 (0.245)
log(margin)					-0.515* (0.271)
Constant	1.850* (1.089)	1.728 (1.265)	1.780 (1.366)	2.798 (1.898)	1.976 (1.929)
Observations	101	101	101	101	101

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

## B.9 Models from the paper, full sample

Table B.15: Explaining investigation with regime type as alternation (full sample)

	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
<i>alternation</i>	1.494*** (0.465)	1.505*** (0.467)	1.159** (0.564)	1.154* (0.594)	1.073* (0.602)
<i>judicial_control</i>		0.119 (0.473)	0.102 (0.476)	0.104 (0.479)	0.145 (0.484)
<i>co-partisanship</i>			-0.591 (0.510)	-0.594 (0.518)	-0.536 (0.522)
<i>corruption</i>				0.004 (0.154)	-0.033 (0.162)
<i>log(margin)</i>					-0.181 (0.237)
Constant	-2.436*** (0.394)	-2.530*** (0.546)	-1.925** (0.755)	-1.937** (0.875)	-2.162** (0.935)
Observations	169	169	169	169	169
Log Likelihood	-73.010	-72.978	-72.287	-72.287	-71.996
Akaike Inf. Crit.	150.021	151.957	152.575	154.574	155.991

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Table B.16: Explaining investigation with regime type as fraction (full sample)

	Logistic estimation				
	Model 1	Model 2	Model 3	Model 4	Model 5
<i>fraction</i>	-6.994*** (2.034)	-4.371*** (1.259)	-3.375** (1.422)	-3.333** (1.445)	-3.177** (1.461)
<i>judicial_control</i>		0.105 (0.474)	0.061 (0.476)	0.078 (0.487)	0.105 (0.490)
<i>co-partisanship</i>			-0.722 (0.487)	-0.724 (0.487)	-0.649 (0.496)
<i>corruption</i>				0.025 (0.150)	-0.011 (0.159)
<i>log(margin)</i>					-0.170 (0.232)
Constant	1.850** (0.921)	0.416 (0.664)	0.460 (0.674)	0.337 (1.000)	0.007 (1.102)
Observations	101	169	169	169	169
Log Likelihood	-44.075	-72.476	-71.405	-71.391	-71.124
Akaike Inf. Crit.	92.151	150.952	150.809	152.782	154.249

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

### B.9.1 Interaction effects

Table B.17: Explaining investigation (all but margin and corruption varying by fraction, full sample)

	Model 1, logistic estimation	
	Model 1	
	<i>fraction_50</i>	<i>fraction_66</i>
log(margin)	−0.025 (0.209)	−0.189 (0.225)
corruption	−0.159 (0.140)	−0.025 (0.156)
Observations	169	169
Log Likelihood	−71.856	−77.681
Akaike Inf. Crit.	159.712	171.361
Bayesian Inf. Crit.	184.751	196.400
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01	

Table B.18: Explaining investigation (all but margin and co-partisan varying by fraction, full sample)

	Model 2, logistic estimation	
	<i>fraction_50</i>	<i>fraction_66</i>
log(margin)	0.101 (0.145)	0.139 (0.113)
co-partisan	−1.332*** (0.441)	−1.774*** (0.321)
Observations	169	169
Log Likelihood	−72.359	−76.150
Akaike Inf. Crit.	160.718	168.299
Bayesian Inf. Crit.	185.757	193.338
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01	

## B.10 Co-partisanship and judicial control by constraints of the executive

Table B.19: Official investigations and judicial control (by *fraction\_over\_66*, elected only)

	Under 66%		Over 66%	
	Not investigated	Investigated	Not investigated	Investigated
No judicial control	24 (80%)	6 (20%)	1 (100%)	0 (0%)
Judicial control	48 (76.2%)	15 (23.8%)	7 (100%)	0 (0%)
Total	72 (77.4%)	21 (22.6%)	8 (100%)	NA (NA%)

Table B.20: Official investigations by fraction and co-partisanship (elected only)

	Under 66%		Over 66%	
	Not investigated	Investigated	Not investigated	Investigated
Different party	19 (61.3%)	12 (38.7%)	0 (NaN%)	0 (NaN%)
Co-partisans	53 (85.5%)	9 (14.5%)	8 (100%)	0 (0%)
Total	72 (77.4%)	21 (22.6%)	8 (100%)	NA (NA%)

## B.11 Matching governors

It could be that those governors that experienced alternation or that govern with higher fractions of a co-partisan legislature are also those with lower margins of victory. Therefore, the data would be observing a disproportionate amount of cases with both low levels of margin of victory and alternation or low levels of margin of victory and lower levels of co-partisan fractions. I use the propensity score matching approach proposed by Ho *et al.* (2011) to test for possible selection effects. This is a two-step approach that first predicts the probability of observing the treatment, and then matches treated and untreated observations conditional on their probability. In this case, the treatment variables are: *alternation*, *fraction\_50*, and *fraction\_66*. I used  $\log(\text{margin})$  as a predictor. The following tables present the matched data (elected only):

Table B.21: Official investigation by alternation, matched by margin of victory

	Not investigated	Investigated	Total
No alternation	47 (94%)	3 (6%)	50 (100%)
Alternation	32 (64%)	18 (36%)	50 (100%)
Total	79 (79%)	21 (21%)	100 (100%)

Table B.22: Official investigation by fraction, matched by margin of victory (elected only)

	Not investigated	Investigated	Total
Under 50%	33 (66%)	17 (34%)	50 (100%)
Over 50%	47 (94%)	3 (6%)	50 (100%)
Total	80 (80%)	20 (20%)	100 (100%)

Table B.23: Official investigation by fraction, matched by margin of victory (elected only)

	Not investigated	Investigated	Total
Under 66%	7 (87.5%)	1 (12.5%)	8 (100%)
Over 66%	8 (100%)	0 (0%)	8 (100%)
Total	15 (93.8%)	1 (6.2%)	16 (100%)

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