

ACTIVATING JUDGES: COURTS, INSTITUTIONAL STRUCTURE, AND THE JUDICIALIZATION OF
POLICY REFORM IN BRAZIL, 1988-2002

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ABSTRACT

A growing body of literature investigates the so-called “judicialization” of politics worldwide over the past half century, considering how courts are brought into the political process. A wave of recent academic study has focused on the courts in Latin America, investigating judicial reform, the rule of law, executive-judicial relations, and to a growing extent, the judicialization of Latin American politics. But this literature remains quite distant from institutional approaches to the executive and legislative branches, which have received substantially more interest from political scientists than courts, and it has focused on judicialization as a phenomenon, rather than on its causes.

This dissertation seeks to address both these imbalances, through a comparative study of the federal courts in Brazil. I focus on how the institutional characteristics of the federal court system structure the public policy debate within the Brazilian judiciary, and thus in the Brazilian policy as a whole. Bureaucratic structures, constitutional arrangements, legal instruments, and the professional norms of judges, lawyers and prosecutors influence public policy debate within the judiciary, and thus affect public policy outcomes, by determining who has access to the courts, where in the court system that access is granted, and how and under what conditions courts make decisions.

These institutional determinants of that “what,” the “who” and the “where” of policy debate in the judiciary shape the policy issues that emerge in the courts as influentially as electoral and party systems affect the policies debated in legislatures, or decree power and rules governing reelection shape both the manner and the content of the policy priorities expressed by the executive branch. I do not make the claim that the judiciary is necessarily as influential in structuring national policy choice as the executive or legislative branches. Nor do I claim that institutional frameworks are the only factors at work: although courts – by the very nature of their law-driven process – are far more rule-governed than the executive branch, judges’ attitudes and strategic considerations also clearly play a part. But our understanding of the judicialization of politics in Latin America will be incomplete if it does not incorporate the institutional features that govern how policy issues are brought into the judiciary, that mold the strategies political actors use to get them there, and that shape the normative filters by which the judiciary mediates these issues.