

Binding the Armed Forces to the Rule of Law

The Role of Constitutional Courts in Latin America
and Beyond

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Constitutional Dilemma

- How to bound the AAFF to the democratic rule of law without compromising its *sprit de corps* and efficacy?
- Present in all democracies
- More consequential in democracies with internal security crisis dealt with the AAFF

What can Constitutional Courts do?

- Jurisprudence can be a road map guiding actors' behavior in conditions of uncertainty
- Providing 'principled' or 'causal' motivations for action channeling cooperation

Uncertainty About What?

- Legal consequences of actions
 - e.g. regulation of the use of force
- Limits to exceptions and extraordinary circumstances
 - e.g. the military jurisdiction
- How to balance conflictive rules or principles
 - e.g. liberty/equality vs discipline/obedience

Judicial Regulation of the Use of Force

- Is a casualty a “homicide” or a “death in combat”?
- Is the crisis an internal-armed-conflict?

Colombia	✓
Peru	✗
Mexico	----

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Scope of Military Jurisdiction

“Who can be judged in military courts, and when?”

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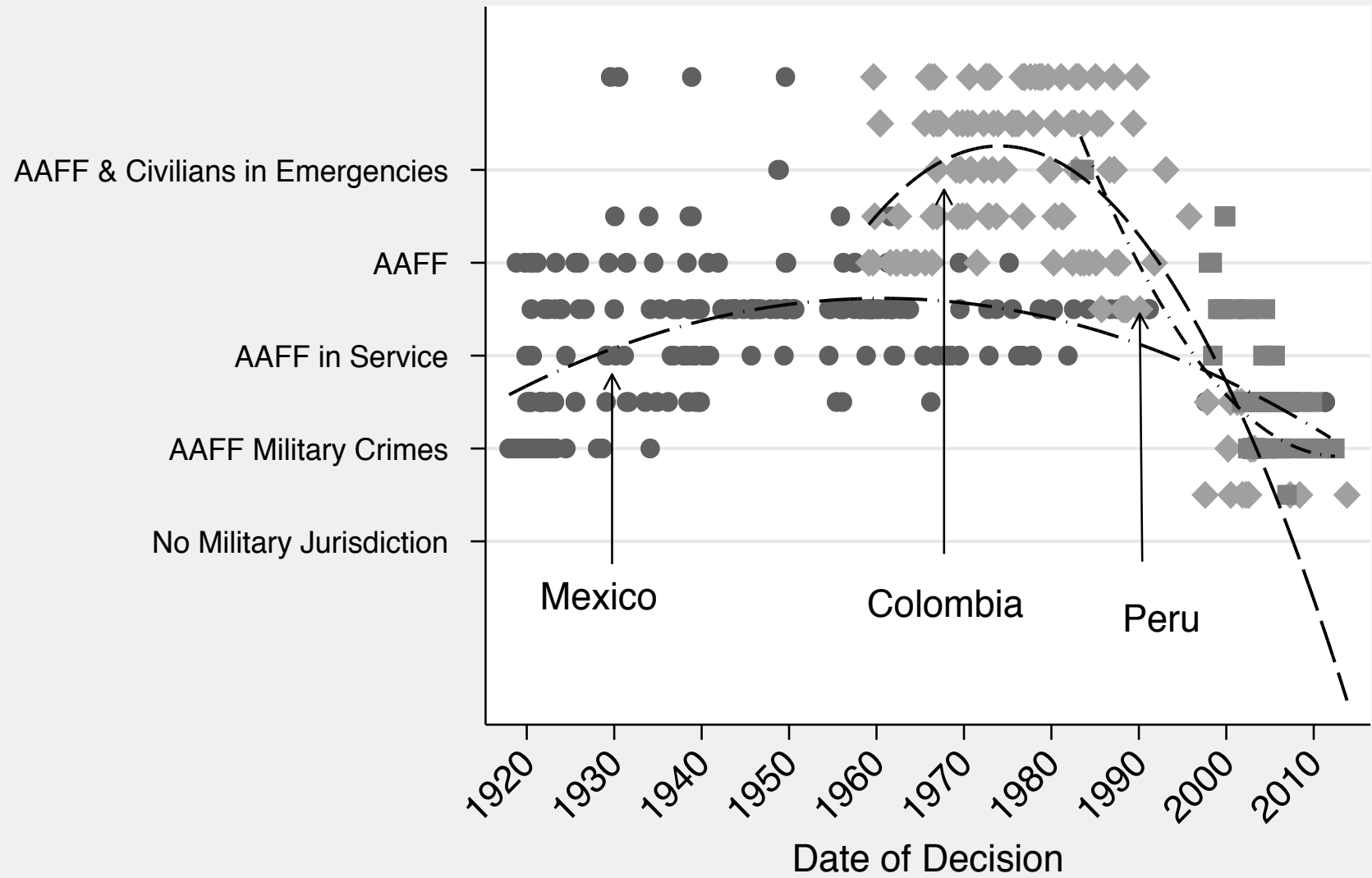


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AFF & Civilians	AFF & Civilians	AFF	AFF	AFF	Nobody	Nobody
Always	Emergencies	Always	Service	Military crimes	Human Rights	Never

Measured by reading and coding opinions

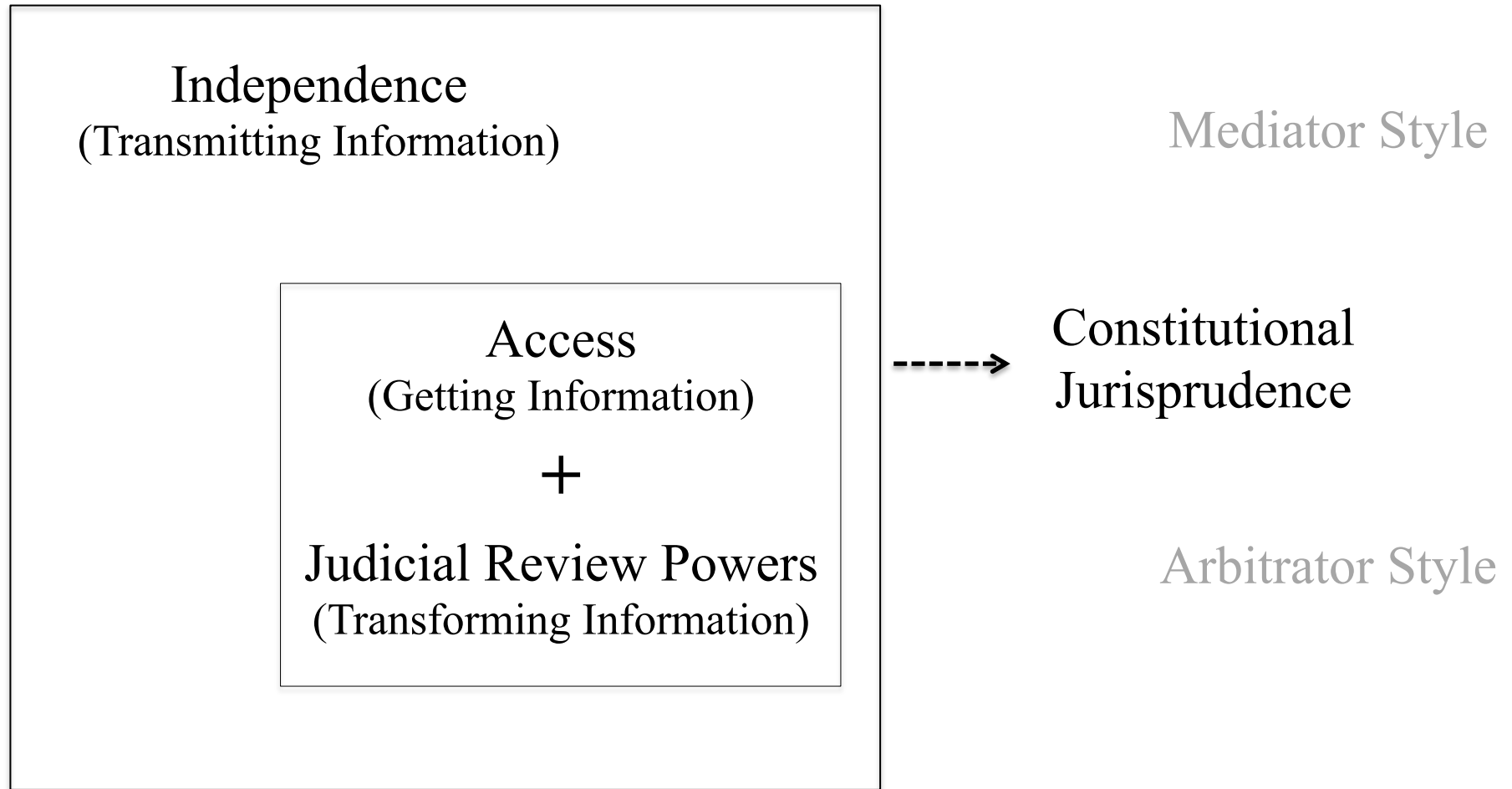
Constitutional Jurisprudence On the Scope of Military Jurisdiction



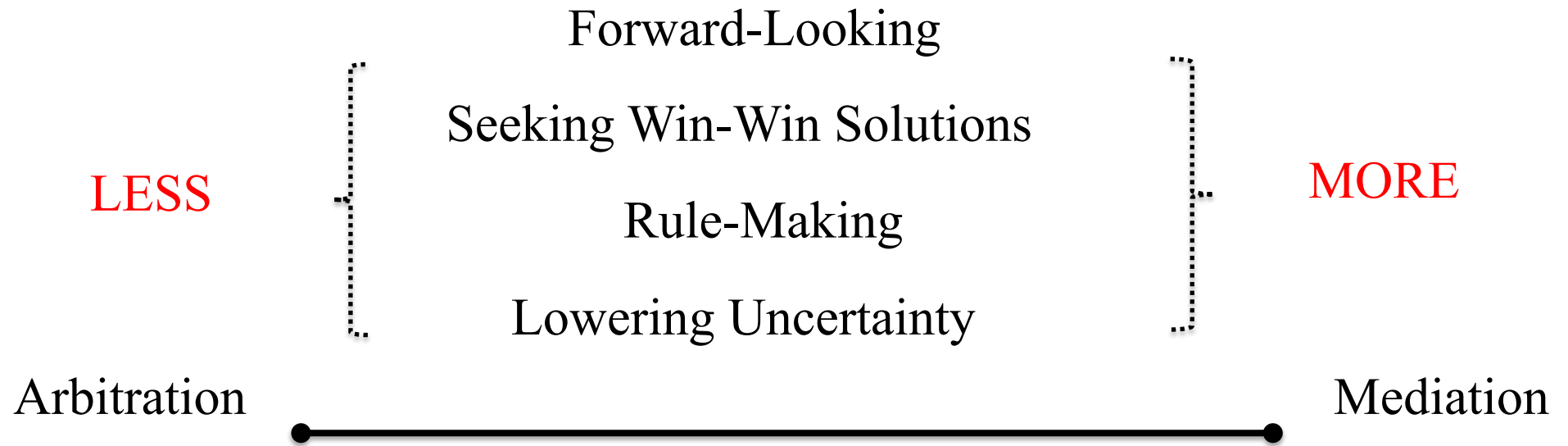
Constitutional Courts as Mediators

Independent, accessible, and powerful
constitutional courts can obtain and
credibly transmit relevant information that
reduces the uncertainty surrounding
military intervention in internal security
crisis

Scheme of the Argument

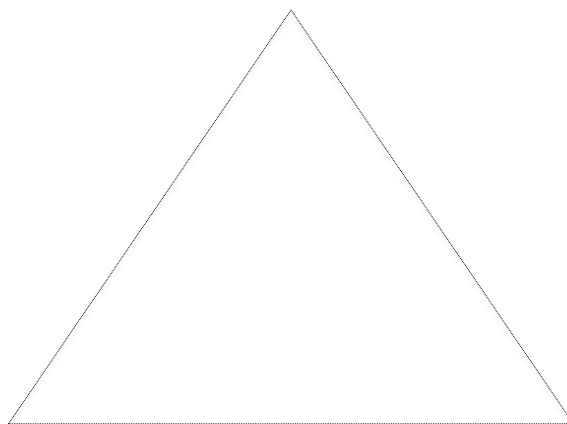


Style of Decision-Making in Conflict Resolution



The Armed Forces Before the Constitutional Courts

Constitutional Court



Citizens, NGOs,
members of the Armed
Forces, Legislators,
Executive, etc...

Armed Forces

Empirical Strategy

Variation within countries across time

Colombia: 1958 – 1991 – 2012

Peru: 1979 – 1993 – 2012

Mexico: 1917 – 1994 – 2012

Variation across countries same time

Colombia: 1991-2012

Peru: 2001-2012

Mexico: 2000-2012

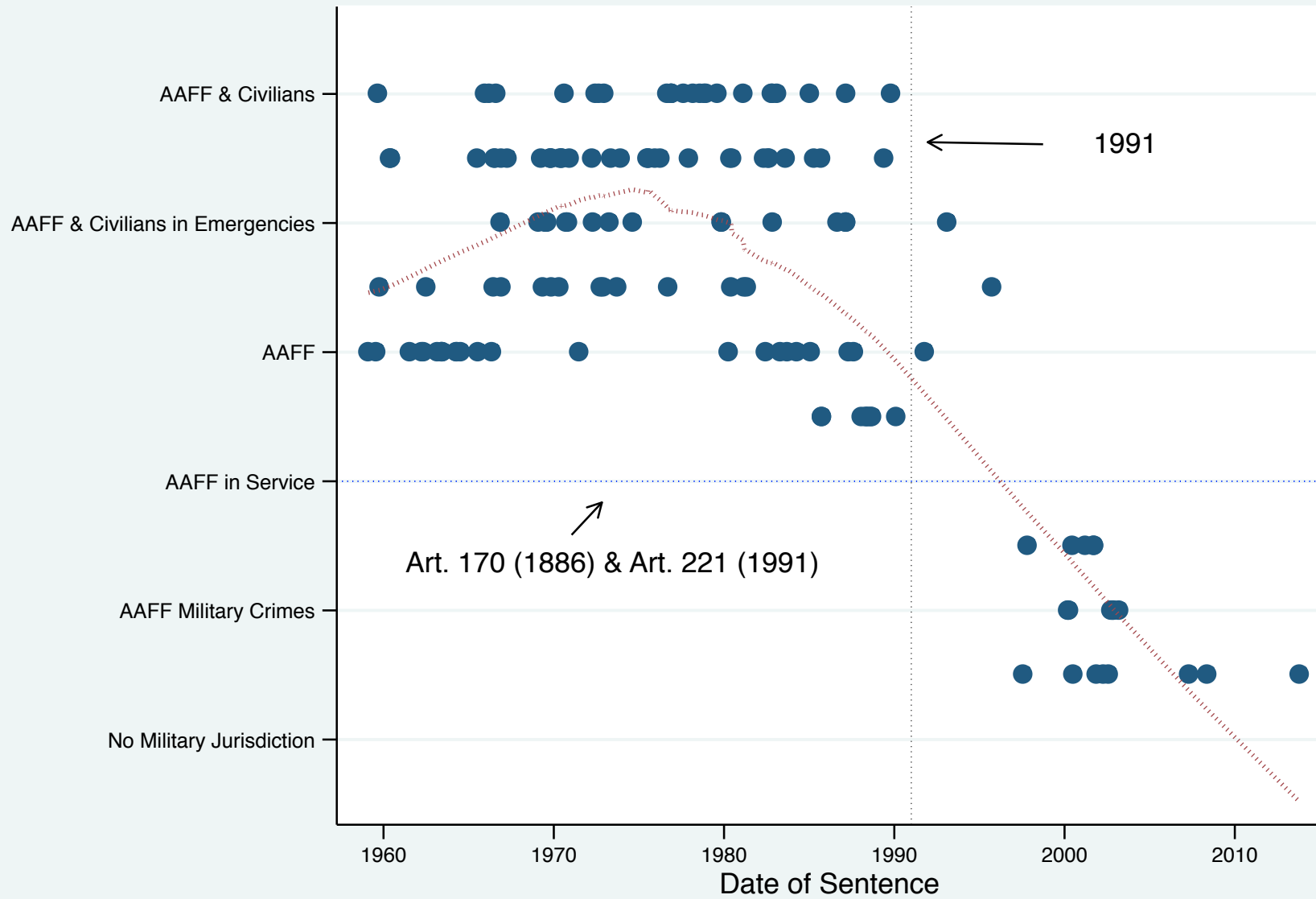
Other cases within scope of argument:
India, Israel, Turkey (Thailand, Indonesia,
Pakistan)

**1991-2013: THE COLOMBIAN
CONSTITUTIONAL COURT AS
MEDIATOR**

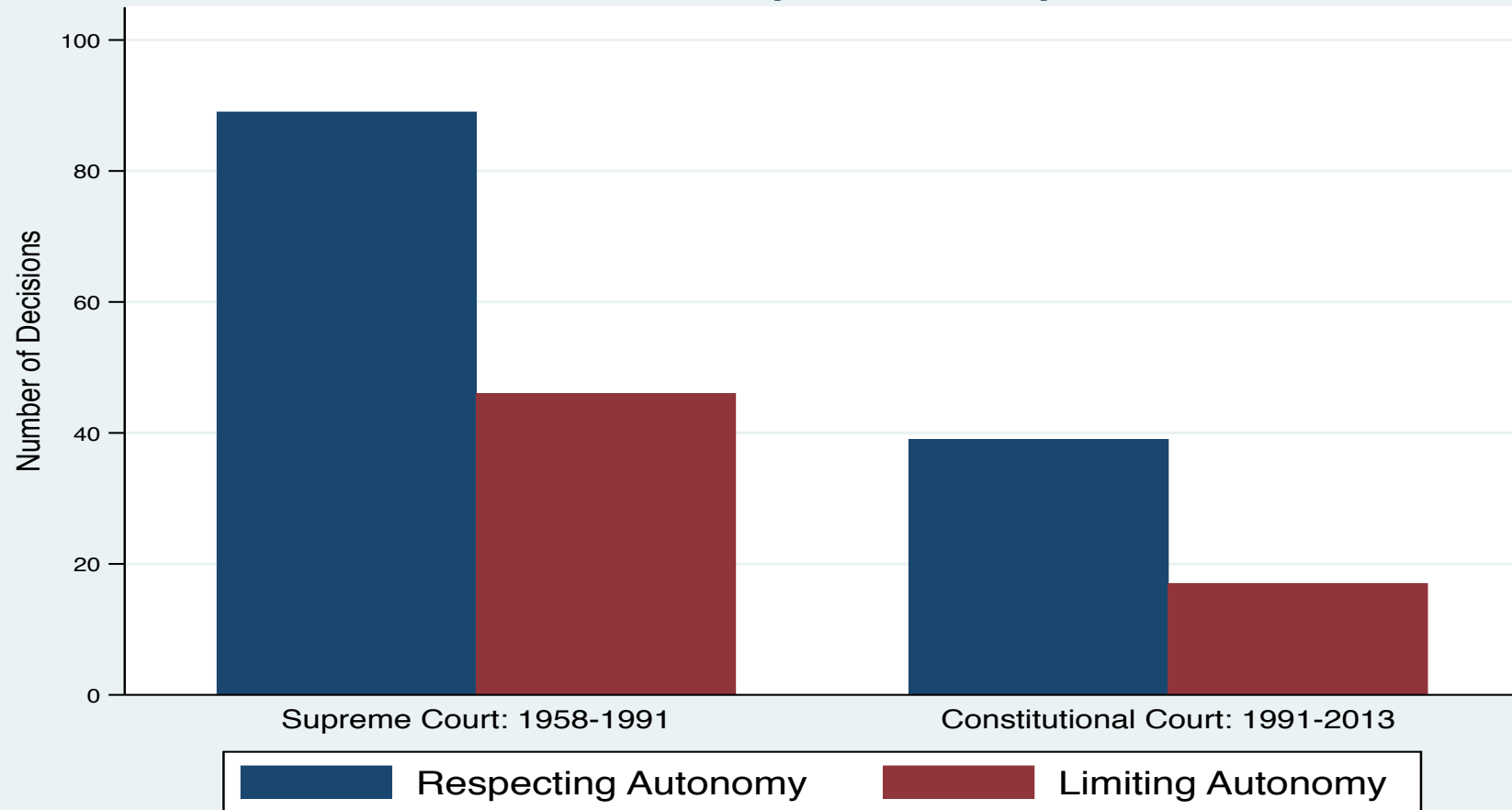
(1) Mediation-like jurisprudence: Give and Take

- Progressive and gradual, but strong, **limitation** of the scope of the military jurisdiction
- **Respect** for decisions made in the military jurisdiction

Scope of Military Jurisdiction, 1958-2013



Decisions on Military Autonomy, 1958-2013



(2) Mediation-Like Jurisprudence: Strategic

- “Marshall’s technique”: announce doctrine but concede particular case
- Reduces uncertainty and gives time to actors to prepare for what’s coming
- e.g. Doctrine on states of emergency and scope of military jurisdiction

(3) Mediation-Like Jurisprudence: Trans **late/form** Actor's Preferences

- International Humanitarian Law (HIL)
 - Judges declare “internal conflict”
 - Giving rules for Armed Forces – but rules of war
- e.g. is a death in combat a homicide (criminal code) or simply a death in combat (HIL)?

Impact on Civil-Military Relations

- Negotiations under the shadow of the (constitutional) law
- AAFF & Gov have embraced IHL
- AAFF accepted **limited scope** of military jurisdiction
- Gov and public opinion has accepted the **specificity of AAFF's** work

THANK YOU