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# Judges in the Formation of the Nation-State: Professional Experiences, Academic Background and Geographic Circulation of Members of the Supreme Courts of Brazil and the United States\*

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This article compares the career profiles of judges from the highest bodies of the Judiciary in Brazil and the United States of America, examining the biographies of all the ministros of the Supreme Court of Justice (Empire) and of the Supreme Federal Tribunal (Republic) in Brazil, and of all the justices of the Supreme Court of the United States, appointed until 2008 in both cases. Based on the sociology of political elites perspective, the article examines data concerning academic background, geographic circulation and the different professional experiences — legal, political and linked to the administration of the State's coercive activity (police or military) — lived through by future members of the Supreme Courts of Brazil and the United States so as to identify the types of individuals recommended to join the top bodies of the Judiciary in the two countries. In this sense, different State-building processes are identified on the basis of the examination of Brazilian and US judicial elites, suggesting a more fragmented and diverse trajectory in the case of US justices, and greater homogeneity and centralization in the case of their Brazilian counterparts.

Keywords: Judicial careers; State-building; Political recruitment; Brazilian Supreme Court; United States Supreme Court.

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## Introduction

The importance of the Judiciary in Brazil — and especially of its uppermost body, the Supreme Federal Tribunal (STF) — has aroused various debates in academia about the role played by the institution and its actual impact on the political system. In this sense, resorting to the experience of other countries or to the literature based on such practices has gradually become an important reference for political scientists, sociologists and academics from the legal field in Brazil (e.g., Arantes 1997; Vianna et al. 1999; Koerner 2007; Oliveira 2008; Taylor 2008; Verissimo 2008; Carvalho Neto 2010).

In line with this tendency, this article seeks to conduct a comparative analysis of two enduring judicial institutions of Brazil and the USA, examining their differences and similarities with regard to the professional experiences, academic background and geographic circulation of their respective members over nearly two hundred years. Following on from previous research on career profiles of members of the top ranks of the Judiciary in Brazil (Marengo dos Santos and Da Ros 2008), and complementing different works that have mapped Brazilian judges' paths (but often failing to include the ministros of the higher courts, e.g., Vianna et al. 1997; Sadek 2006), this article aims to compare those findings with the picture observed in the similar body of the USA, the United States Supreme Court (USSC).

In this sense, the biographical data of all the ministros of the Supreme Court of Justice (1829-91) and of the Supreme Federal Tribunal (1891 to the present), and of all the justices of the United States Supreme Court (1789 to the present) were examined. The data gathering process was concluded in 2008.<sup>2</sup> Using a broad timeframe, the aim here is to detect changes and continuities as to the academic background, geographic mobility, professional and legal experience, and circulation of future judges in the other branches of government (Executive and Legislative), both in elected and appointed positions, as well as in those referent to the administration of the State's coercive activities (chiefly in the management of the military and police), prior to joining the Supreme Court of each country.

Hence, this article may aid in identifying reflections of more general political changes on the profiles of members and on patterns of political intervention of the Supreme Courts of Brazil and the United States, as well as the kinds of relations established between the other branches of government and these courts in different historical periods, at times more polyarchical, at times less. Moreover, it is worth recalling that the political environment and institutional arrangements vary considerably from one country to the other over the course of the respective histories of their Supreme Courts. On the one hand, from very early on the USSC became involved in questions of great political relevance, as in the famous cases *Marbury v. Madison* (1803) and *Dred Scott v. Sandford* (1857), for example. Furthermore,

in the USA there were periods of conflict between the courts and the other political institutions (e.g., McCloskey 2004; Whittington 2007; Geyh 2008), although the institutional arrangement there has undergone little alteration, at least from the formal point of view. On the other, in Brazil the attributions of the Supremo have been significantly modified. Not only has the country gone from Monarchy to Republic and experienced authoritarian periods, but the highest body of its Judiciary has also been transformed over the years, going from a court of little relevance during the monarchical period to one endowed with mechanisms of abstract judicial review in recent times. Along this process, the court has also changed its name, from Supremo Tribunal de Justiça (STJ, or Supreme Court of Justice) to Supremo Tribunal Federal (STF, or Supreme Federal Tribunal). However, such dissimilarities do not harm this comparison. Because it covers such a vast temporal stretch, this article intends to delineate the effects of these very changes on the court's makeup.

Given the above, and as an important reflection specifically for the local reality, this work allows one to understand the Brazilian case more adequately, interpreted as it often is in the light of overseas experiences without an actual systematic comparison between the STF and its congeners from abroad.<sup>3</sup>

In particular, this article may help one understand the roles that the Judiciary and its respective members can play in the construction of the nation-state. Different authors, among whom Bendix (1978), Flory (1981), Shapiro (1981), Tilly (1996) and Vellasco (2004) note that the administration of justice constitutes a space for auxiliary but important political mediation in the State-building process. The exercise of adjudicative power — that is, the capacity to settle and decide definitively the conflicts between inhabitants of a given territory with the backing of the coercive apparatus of the State — helps lay the foundations for the legitimization of the exercise of political power, establishing the presence of the nation-state and its agents in local political spheres and making it more tangible in the eyes of most of the population. A comparison between two countries whose State-building processes are generally considered so different can help one understand how the agents of the Judiciary can carry out the same task in distinct ways. Thus presented, the purpose is to revisit well known theses about the political formation of Brazil and the United States, and to ally them with a sociology of political elites — particularly the judicial elites — of the two countries. Therefore, this work is part of a growing trend in Brazilian political analysis. It prioritizes the study of political elites in order to complement or even to nuance the examination of decision-making processes and political institutions, which constitutes the mainstream owing to the influence of neo-institutionalism, particularly of the rational choice hue (Coradini 2008; Engelmann 2008a; Marengo dos Santos 2008; Perissinotto and Codato 2008).

In tune with a well-known literature that implicitly made comparisons between the two countries, this article seeks to demonstrate that the State-building processes of Brazil

and the USA followed disparate models. The former was marked by the concentration of political power; the latter, by its fragmentation, including in terms of geography and academic background of the elites. While the North American Republic was constituted through the amalgam of different local and regional political elites, Brazil opted for a route in which the national political elite controlled access to the positions of greatest relevance, with only gradual diversification. Even if not directly involved in these processes, the judicial elites of the two countries illustrate these differences clearly, as will be seen below.

In an effort to place this research within the perspective of broader discussions on the process of national construction of Brazil and the United States it might be tempting to analyse the period from the two countries' independence until some temporal milestone that affirms in "definitive" fashion the "consolidation" of the nation-state, such as the victory of the North over the South in the US Civil War or the Proclamation of the Republic in Brazil. However, to avoid a long discussion about which milestone should be used, I have opted to avoid a fixed periodization. The analysis thus covers the political history of Brazil and the United States to 2008, when the data gathering process was concluded.<sup>4</sup>

## Overview of the Data

The number of members of the Supreme Courts of the two countries and their respective forms of investiture in the post did not remain stable over the many years covered by this article. In fact, the exact opposite has been seen in the political histories of these two American nations. The artifice of increasing and reducing the number of members of the STJi/STF in Brazil and of the USSC in the USA occurred on several occasions. The Brazilian Supreme Court has had five different headcounts since 1829, while the American has had six since the year of its establishment (1789).

If there has been symmetry as to the variation in the number of members, the same cannot be said of the rules of appointment. Since the USSC was founded, there has only been one rule for the investiture of judges in the highest court of the land, unlike its Brazilian counterparts (STJi and STF), for which there have been three. Table 1 below sets out these data, which deserve some detailing.

Firstly, as may be seen, Brazil's top court has always had more ministros than the USSC has had justices. If on the one hand the maximum number of members of the USSC has not gone above nine except for a three-year period, and has stayed at nine for most of the court's existence (165 years, to be precise), on the other, in Brazil, it has oscillated between 15 and 17 members for exactly 106 years. This is probably the reason why one finds a much higher total number of individuals appointed to the Brazilian than to the US court. Secondly, as for changes in total number of members, these were generally stronger in Brazil.

On the other hand, although the number of members of the USSC has remained stable over the last 140 years, several proposals to enlarge the court have been made, including some championed by the president himself. The classic case is the court-packing plan proposed by Franklin D. Roosevelt in 1937. It aimed to force changes to some of the court's positions, which was reluctant to accept some measures adopted by the government to combat the economic crisis initiated in 1929. Although the plan was not implemented, the government's goal was achieved. Faced with the threat, the court modified its positioning and allowed the president to pursue his policies. Generally the phenomenon is interpreted as the justices changing their position in order to avoid damage to the court (Caldeira 1987).

**Table 1** Number of members and rules for appointment in the Supreme Courts of Brazil and the United States

	Brazil	United States
Number of members	1829-1891 – 17 ministros 1891-1931 – 15 ministros 1931-1965 – 11 ministros 1965-1969 – 16 ministros 1969-present – 11 ministros Average – 13.44 ministros	1789-1807 – 6 justices 1807-1837 – 7 justices 1837-1863 – 9 justices 1863-1866 – 10 justices 1866-1869 – 7 justices 1869-present – 9 justices Average – 8.87 justices
Rules for appointment	Three different rules:  Rule of the STJ (1829-91): Appointment by the emperor from among juízes letrados extracted from the Relações by the criterion of seniority and granting of the title by Council of State;  Rule of the STF (1891-1930; 1934-7; 1946-present): Appointment by the president with confirmation by the Senate;  Rule of the STF (1930-1934; 1937-1945): Appointment by the president without confirmation by the Senate.	A single rule (1789-present):  Appointment by the president with confirmation by the Senate.

Sources: Epstein and Segal (2005); Mello Filho (2007).

Specifically with respect to the rules of investiture for members of the two countries' courts, they were very similar most of the time. Since the establishment of the USSC, the practice is the appointment of justices by the president, with subsequent confirmation by two thirds of the Senate, as set out in Article II, Section 2 of the US Constitution. It is worth remembering that it is a presidential prerogative and, as such, it is to be found in the article that regulates the powers of the president and not in the article that sets out norms

regarding the Supreme Court or the federal Judiciary, of which it is a part. A similar practice is currently employed in Brazil. It was first adopted in 1891, when the first Constitution of the Republic, drawing on the US source, demanded “notable knowledge and reputation” from ministros as additional requirements for appointment. These were altered in the 1934 Constitution to “notable legal knowledge and unblemished reputation”, and this wording has remained since then. One difference of apparently minor importance is the different majorities required for Senate confirmation. While in the USA two thirds of the votes in the upper house are required to confirm the presidential will, in Brazil only an absolute majority is required. Despite these differences, it is fair to state that the procedures are rather similar. This rule has been in place since the very creation of the STF, with only two brief interruptions during the 1930-1934 and 1937-1945 periods, when the Senate’s confirmation was suspended. This granted practically full discretion to the president to appoint members of Brazil’s Supreme Court, which was coherent with the not necessarily democratic nature of the political regime then in force in the country.

Before the republican period, the rule for the STJi during all of its existence was the appointment by the emperor from among the juizes letrados of the Relações – as were then called the Provincial High Courts (Tribunais de Justiça nowadays) – based on the criterion of seniority, as indicated by Article 163 of the 1824 Imperial Constitution. Moreover, to be appointed, the ministros had to receive the title from the Conselho de Estado (Council of State). As one can see, the rule for choosing members of the STJi was much narrower than the one that came to be adopted in 1891 with the creation of the STF. The rule compelled the emperor to recruit from among the judicial function, excluding even other professionals linked to the Law, such as lawyers. The rule further determined that this choice should be made using the seniority criterion, which reduced the options even more. Countering these restrictive criteria was the need for the alluded title from the Council of State for the chosen judge to be actually appointed to the post of ministro of the STJi. In this sense, one might suppose that the alluded necessity meant that greater selectivity of choice on the emperor’s part was possible, for it allowed him to grant the title only to those he really wished to appoint to the post. Also with regard to the rule of investiture, it is interesting to note that the criterion of selection applied to those judges called letrados, i.e., holders of a Law degree and knowledgeable in the field — at least in theory. This is by no means a gratuitous or obvious point. The fact that ministros should be those considered learned greatly restricted the emperor’s range of choice, but in a way that was consistent with the political objectives of the time. This is because juizes letrados were those who began their careers by taking up posts of juiz de fora, later called juiz de direito. This was a post held under the emperor’s designation and, mostly, under the control of the ministry of Justice Affairs. This post was completely different from the so-called juizes de paz, selected by local political groups and

often not Law graduates (Flory 1981; Carvalho 1996). Therefore, the fact that ministros had to be recruited from among the letrados was in perfect consonance with the strategy of the construction of a national elite unconnected with local particularisms, thus contributing to the establishment of a hierarchy between the local and national political orders, the latter taking precedence over the former. In this sense, it is important to observe that the greater part of the imperial political elite as a whole was made up of judges, as attested in the already classic work by Carvalho (2003), which only confirms the importance of this rule for the appointment of judges to the Brazilian Supreme Court during this period.

With the intent of examining the trajectories of each member of the Supreme Courts of Brazil and the United States academic works and publications of the institutions themselves were consulted. With reference to the Brazilian court, the sources consulted were the works by Lago (2001), Mello Filho (2007) and Marenco dos Santos and Da Ros (2008), as well as publications like the *Anuário da Justiça* produced by the Armando Álvares Penteado Foundation (2007) and the STF website.<sup>5</sup> As for the profiles of USSC justices, much of the material was already catalogued in the database jointly put together by Lee Epstein and other researchers and available directly on the worldwide web.<sup>6</sup> The content of this database was checked and complemented with the work by Cushman (1995). New variables were constituted with the aim of examining questions of interest to the present research, by cataloguing in different fashion the findings of those researchers.

Once the sources of information were established, some criteria were followed to catalogue the data adequately. Firstly, I preferred neither to include individuals rejected by the Senate, nor individuals whose nominations were withdrawn by the head of State. This is because the former (rejections) are relatively rare (five in the case of Brazil, twelve in the case of the USA) and for the latter (withdrawal) no information was found for the whole time-frame under examination, which could constitute a source of bias in the analysis of the cases. Hence, examining the profiles of individuals appointed and confirmed by the Senate seems to constitute an adequate indicator of the profiles of the judicial elites that were desired and consented by the political forces of the moment in each country.

Likewise, with regard to the US case, only justices who have actually taken up a seat on the Supreme Court on a permanent basis have been included, regardless of being chief justice (chair of the court) or associate justice (member of the court). I have opted not to distinguish the two because the prerogatives of the chief justice are minor and do not place him/her in a position that confers more power.<sup>7</sup> Note that one justice was a member of the USSC on two separate occasions. Charles Evans Hughes joined the court in 1910, left in 1916, returned in 1930 and left for good in 1941. In this case, he was included twice in the database, since he was appointed twice to the court. In the US case, therefore, 110 individuals sat on the court, but this resulted in 111 cases for analysis. Designations for the post of

chief justice from among those already on the court were not computed because they do not mean the entry of a new individual. Conversely, new justices appointed directly to the chief justice seat were included in the database prepared for this article. With respect to the Brazilian case, only individuals that took up seats on the court on a permanent basis were considered. When the STJ transitioned to the STF in 1891, some ministers were kept on in the new court. In these cases, given that the individuals did not leave the court to carry out other activities and were merely re-appointed to the new court, they were not computed twice, but only once. As happened with justice Charles Evans Hughes, who was appointed to the US Supreme Court more than ten years after leaving it the first time, ministro José Francisco Rezek was appointed twice to the STF. He originally took up his seat in 1983, resigned in 1990, returned in 1992 and left definitively in 1997. Owing to this, his case was computed twice, once for each appointment. A summary of the information that makes up the universe of cases worked on is shown on Table 2.

**Table 2** General data about the members of the Supreme Courts of Brazil and the United States

	Brazil	United States
Total time (years)	179	219
Cases under analysis (total number of appointments)	274	111
Individuals under analysis	273	110
Average number of appointments <i>per year</i>	1.53	0.51
Proportional turnover per year	0.113	0.057

Right from the start it is important to observe the rather large difference between the two courts with regard to the second-to-last topic, the average number of appointments per year. One court has over three times the figure for the other, thus denoting that the capacity of a head of State to influence the makeup of the court by appointing new members is three times greater in Brazil than in the USA. A few hypotheses may be suggested to explain this difference. Firstly, one must mention the size of the courts. As seen previously, in Brazil the court nowadays has eleven members, and on occasion had fifteen and sixteen members, whilst for the long period when it was called Supreme Court of Justice (1829-1891) it had seventeen members. On the other hand, the composition of the US court remained stable during much of its existence: the number of members stabilized at today's nine as far back as 1896, but always with fewer members than its Brazilian counterpart. This means that the attribution conferred on a president to name a new member to the court is more frequent in Brazil, but its effect on the makeup of the court is not as salient as in the USA. Even then, it is worth noting that controlling the

average number of members that both courts displayed over the course of their histories, the proportional turnover per year<sup>8</sup> is twice as high in Brazil as in the United States, suggesting that changes in the composition of the court are in fact more frequent in the South American country. It is also worth noting that the rules regarding the exit of members of the two courts are different. While STF ministros since the 1934 Constitution were obliged to retire at a certain age — at 75 in the 1934 Constitution, at 68 in the 1937 Constitution and at 70 since 1946 — in consonance with compulsory retirement rules in force for all public employees, USSC justices remain on the court until they themselves decide to retire — there is no maximum age. This often means that justices stay on beyond the age of eighty, which makes it difficult for fresh places to open up thus reducing the frequency of appointments (McGuire 2005).

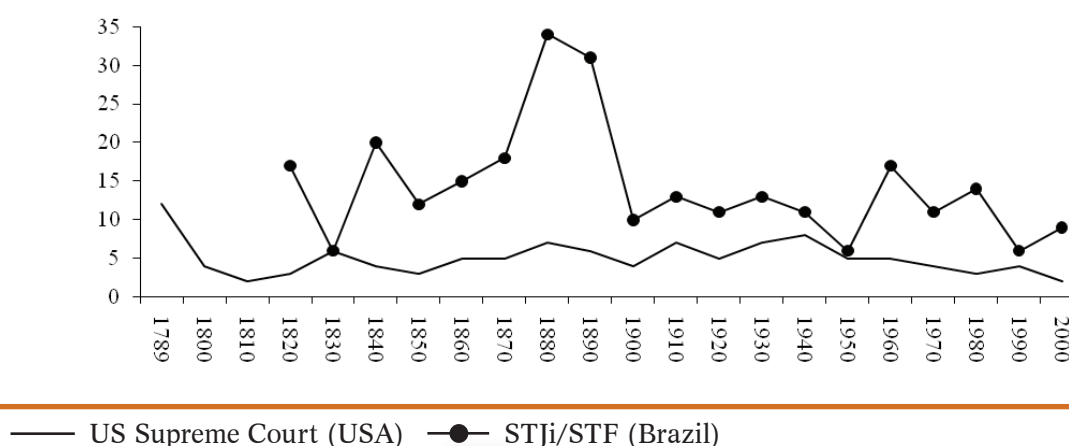
The following aspect is of particular interest to this study. One must mention an important difference as to the political stability of the two countries over time and possible reflections on the composition of the respective Supreme Courts. While episodes of court-packing in the USA led to some alteration in the makeup of the court only in the 19th century, in Brazil these episodes were more frequent and led to more abrupt changes as to the total number of court members, as seen above. Moreover, as in the example related by Helmke (2005) in relation to the Argentinian Supreme Court, historically, many members of the STF in Brazil were compulsorily retired, opening the way for the appointment of ministros more aligned with the president and regime of the day. Some episodes, such as the impasses generated at the initial moments of turbulent political changes, like the Proclamation of the Republic, the 1930 Revolution and the 1964 Military Coup are examples of this.

Lastly, an explanation may be suggested regarding the rules of access to court posts, especially that which existed in Brazil during the Empire. Because STJi ministros were extracted from the *Relações* following the criterion of seniority, the turnover rate rose very significantly, since members would fall ill, retire or simply die shortly after arriving at the Supreme Court. In certain years, like 1886, nine new ministros had to be appointed to the court, while seven new members joined in the following year. This meant almost total renewal of a seventeen-member court in just two years. During the 1880-1890 period alone, 65 new ministros were appointed to the STJi. The Graph 1 shows this information in detail. However, during this period there also takes place the conjugation of two factors highly conducive to alterations in the court's makeup: the effect of the seniority rule and the confrontations relating to the establishment of the republican regime.

If the effect of the investiture rule of the STJi explains the significantly higher number of judges appointed during the final decades of the 19th century, the hypothesis relating to periods of political instability seems to be confirmed, considering which heads of State made the most appointments to the Supreme Court in Brazil and, to a lesser extent, in

the USA. As Table 3 demonstrates, as well as leaders who remained for long periods at the helm (like Dom Pedro II and Getúlio Vargas, for example), the heads of State who made most appointments to the Brazilian Supreme Court are almost always associated with periods of heightened political instability, such as the country's independence and consequent establishment of the first Supreme Court (Dom Pedro I), the Proclamation of the Republic, its consolidation and the establishment of a new Supreme Court (Deodoro da Fonseca and Floriano Peixoto), the start of the military regime (Castello Branco) and its subsequent transition to democracy (João Figueiredo), as well as the Vargas Era itself. The intensity of the political transformations also seems to explain the presidents who most appointed justices in the USA, though less markedly than in Brazil. The names of George Washington, Franklin D. Roosevelt and Abraham Lincoln, linked to events like the country's independence and the establishment of the first Supreme Court, the emergence of the administrative State and the Civil War, fit into this profile perfectly well — though the names of Andrew Jackson, William Taft and Dwight Eisenhower do not exactly fit.

**Graph 1** Total number of members appointed to the supreme courts of Brazil and the United States



**Table 3** Heads of State that appointed most members to the Supreme Courts of Brazil and the United States

Brazil	United States
Dom Pedro II – 98 (35.3%)	George Washington – 10 (9%)
Getúlio Vargas – 21 (7.7%)	Franklin D. Roosevelt – 8 (7.2%)
Dom Pedro I – 17 (6.2%)	Andrew Jackson – 6 (5.4%)
Deodoro da Fonseca – 16 (5.8%)	Abraham Lincoln – 5 (4.5%)
Floriano Peixoto – 14 (5.1%)	William H. Taft – 5 (4.5%)
João Figueiredo – 9 (3.3%)	Dwight D. Eisenhower – 5 (4.5%)
Castello Branco – 8 (2.9%)	

In an effort to continue presenting the data in an organized fashion, I have opted to divide them into two groups, which correspond to the next two sections. The first centres on the discussion about the career profiles of the individuals recruited onto the Supreme Courts of the two countries, with reference to their professional experiences prior to the investiture in the post and examining their circulation in political, coercive and legal arenas. The second section examines patterns of higher education and geographic mobility in the two cases, unveiling other important differences and similarities about the processes of political formation of Brazil and of the United States.

## Professional experiences

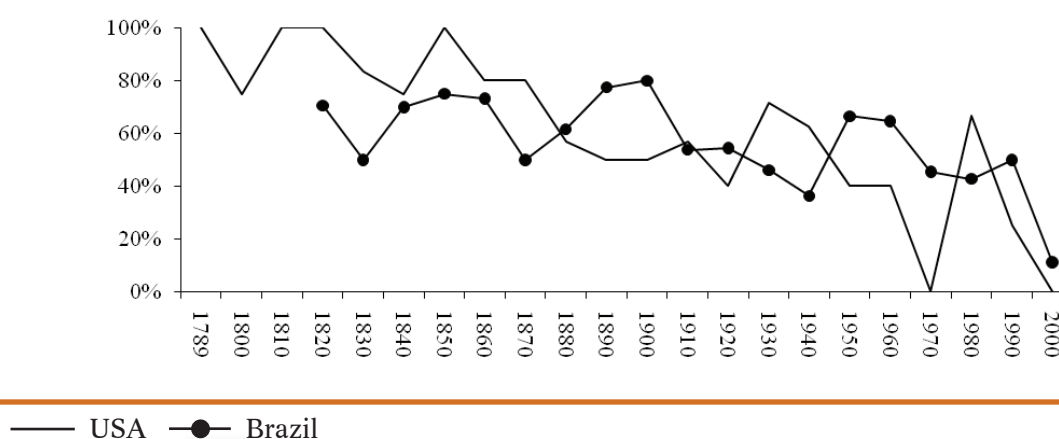
In order to access the professional experience of members of the Brazilian and US Supreme Courts, we must not remain circumscribed to experience in the legal field — the obvious choice. Rather, we must take into consideration two fundamental arenas that constitute important parts of these individuals' process of socialization. The first of these arenas is made up of careers considered to belong to the political universe (particularly in the Executive and the Legislative); the second, of careers involving administering the coercive activity of the State (especially in the management of military or police activities). Hence, we now turn to how the professional experience of ministros and justices developed in such careers.

Starting with the circulation of future Supreme Court judges in posts of a political nature, one finds that both in Brazil and the United States there is a marked presence of individuals with passage through posts in the Executive and the Legislative prior to their investiture. In the Brazilian case, 59.8% of the total number of individuals held posts of this nature, with the figure reaching 63.9% in the US case. As Graph 2 shows, the recruitment of individuals with previous political experience has been gradually and continuously declining, in spite of having constituted the main type of experience, in parallel with strictly speaking legal experience, among members of the two countries' highest courts of Justice. As will be seen later, these activities stand out more than those involving the coercive role of the State.

Furthermore, with regard to the US case, one fact is worthy of note: practically all those appointed to the Supreme Court were members of political parties prior to their investiture. Out of 111 appointments, in only one case — that of justice Felix Frankfurter — was the appointee an independent, i.e., not affiliated to any political party. However, with reference to the Brazilian reality, the data are incomplete in this regard, so that it is not possible to delineate ministros' profiles in this regard accurately. The presence of individuals who held posts in the Executive and Legislative prior to their investiture in the

Supreme Court — that might serve to identify those linked to political parties — cannot be considered an adequate indicator. This is because one is dealing with two distinct situations that do not necessarily coincide. In other words, an individual can take up a position in the Executive without it being a political appointment, just as much as he/she can be a member of a political party without ever having held a post in the Executive or Legislative. (Just think of an individual who made a career as the lawyer for a political party, for example.) As already mentioned, since these data are scarce and incomplete for the Brazilian case, I have opted to exclude them from the analysis.

**Graph 2** Previous political experience



If we look closely at the Graph 2, it is possible to observe that the variations in the historical series reveal important similarities and differences between the realities of Brazil and the United States. Firstly, a point in common: political experience among members of the Supreme Courts is a phenomenon in decline. This has already been recognized by other works, both with reference to the Brazilian case (Bonelli 2001; Marengo dos Santos and Da Ros 2008) and to the US case (Baum 1999; 2006). In the past, clearly an essential resource to be mobilized in order to reach such posts, today it appears less important, which does not mean its total exclusion from this process though. The other side of this very same datum is that at the initial moments of the construction of the two countries' nation-states, experience in the political arena seems to have been considered essential to the role on the Supreme Court. This is particularly true for the United States, where justices' rate of previous political experience hits 100% on several occasions between the initial moments of formation of the Supreme Court (1789) — and of the country itself — and the 1850s, the decade preceding the Civil War in which the North prevailed over the South. In Brazil, although with a little less intensity, the political experience of STJi/STF judges seems to have been particularly important during moments of political consolidation. This is what occurred, for instance, between the decades of 1820 and 1860, when the country itself was

being formed and its first Supreme Court being set up, and especially around the time of the Proclamation of the Republic, between the decades of 1890 and 1900, when political instability was the norm. It is important to note that in the latter period, and especially after the promulgation of the 1891 Constitution, the court inaugurated its — previously inexistent — powers of judicial review, making it more present in the political arena. It is likely that political experience came to be required of STF judges as a way of “compensating” for these new powers, conferring more flexibility on the court’s decisions, particularly those with potential political impacts.

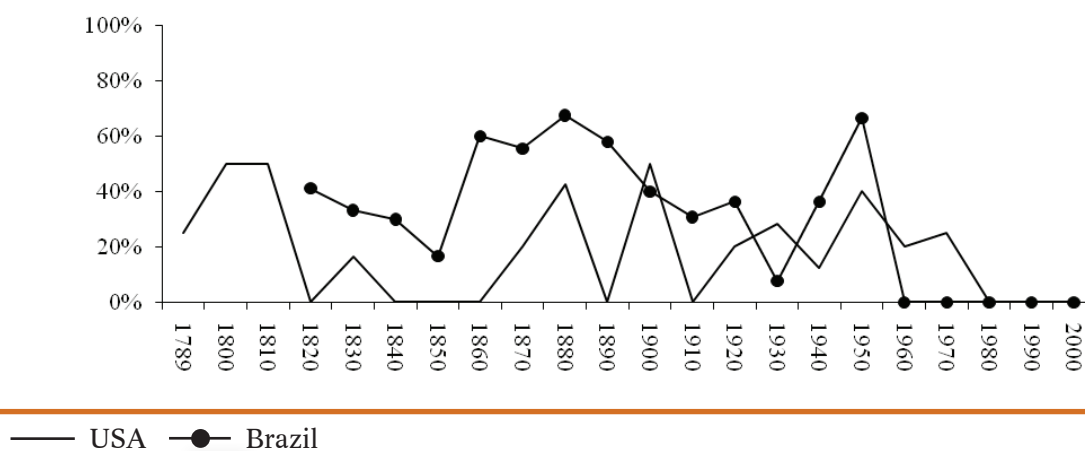
However, the aggregate analysis of the above data conceals some important differences between the two realities, which can be better explored if one specifies the types of posts and government bodies where such experience was gained. When one considers just passage through elected legislative posts (at the local, state and/or national level), one observes that this constitutes the main source of political circulation in the United States. In all, 51.4% of USSC justices held this kind of post before joining the Supreme Court, as against 33.3% who held posts linked to the Executive. In Brazil, it has been different: 45.3% of the total have had a passage through non-elected posts in the Executive, such as ministers or secretaries of State. However, this percentage is not very far off the 41.6% who held posts linked to the Legislative in Brazil before entering the country’s Supreme Court.

These data suggest an interesting difference between the two realities. If the principal form of political experience of USSC judges is the legislative arena, it may be concluded that these individuals are especially linked to local or regional political elites. Owing to the district-based electoral system in force in the USA for legislative elections, individuals must rely on state or local political bases even in national elections, which restricts their links with potential national elites in the *strict sense*. This suggests that the links of potential members of the judicial elite of the United States get established more strongly in relation to groups originating in different regions of the country and not directly with its political centre. Distinctly, there do not seem to be significant differences with respect to the political experience of members of the Brazilian Supreme Court between legislative and executive posts. One might suppose, therefore, that the importance of legislative posts and consequently of local political elites does not occur with the same intensity in Brazil in comparison with the US case, possibly suggesting that such groups have less of a bearing on the political careers of the Brazilian judges being analysed.

For their part, the experience of judges in “coercive” careers is generally less remembered, but it equally constitutes an important forum in the socialization of potential members of the upper judicial circles, as has already been pointed out in relation to Brazil (Schwartz, 1973; Koerner, 1998). In this case, the differences between Brazil and the United States are deep, and denote rather disparate life experiences between the members of the

two countries' Supreme Courts, with important reflections in relation to the interpretation of the role of these elites in the State-building process. Of the 274 appointees to the STJi/STF, 97 (35.4% of the total) had some experience in administration of the coercive activity of the State. This percentage drops almost by half in the US case, to 18.9%. These figures by themselves would be enough to reveal an important difference between the two cases, but there is another that is probably more relevant. Not only did future STJi/STF ministros have more involvement than USSC justices in the management of the coercive apparatus of the State, but there were also important differences regarding the type of role played. In Brazil, the main form taken by this kind of experience was the management of police forces, in posts such as station chief or chief of police, among others. Ministros with this kind of experience before joining the court amounted to 28.1% of the total number, whilst those who had contact with the administration of military activities were 13.1%. This military experience took place mostly during the imperial period, when many STJi ministros held posts on the Supreme Military and Justice Council, a body replaced by the Supreme ("Higher", nowadays) Military Court in 1893. It was chaired by the emperor himself and was charged with disciplining the armed forces and trying military crimes like treason, among others (Souza 2007). As for the USA, it is noteworthy that none of the future USSC justices held posts of a police nature before entering the Supreme Court of the country. The 21 individuals (18.9% of the total) who held posts linked to the administration of the coercive activity of the State in the USA were middle- and high-ranking officers — captain, major and colonel — in the country's armed forces, almost always doing compulsory military service and at times of war, whether more recent ones, like the Second World War, or wars further in the past, like the Civil War or the War of Independence.

**Graph 3** Previous coercive experience



Analysing the historical series of the two realities on Graph 3, one observes that experience in managing the use of state violence among future members of the two countries'

Supreme Courts is a process in clear decline. In Brazil, no individuals with this type of experience have been appointed to the STF since the 1960s, whilst the same is the case for the USA since the 1980s. In the latter case, the percentages have been very low practically since the start of the 20th century.

It is worth recalling that both in Brazil and in United States there are individuals who had experiences both in political arenas and in coercive activities before joining the highest courts of their respective countries. In Brazil, no fewer than 59 had legal, political and coercive careers, which is equivalent to 21.5% of the total, whereas in the USA there were 16 (14.4%). Conversely, it is important to stress that nobody was appointed onto either of the Supreme Courts who was completely inexperienced in the legal field. Even if they had other experiences in parallel, it is important to highlight the fact that all the members of the institutions in question had at some moment prior to their investiture in the post, even if briefly, had some professional experience in positions traditionally associated with the legal universe, as lawyers or judges, among others. Even if some individuals lacking formal academic education in the legal field held posts on the two courts, at least some experience in professions of the field they did at some point gain. We now turn to discussing these variations at greater length.

### Academic background and geographic circulation

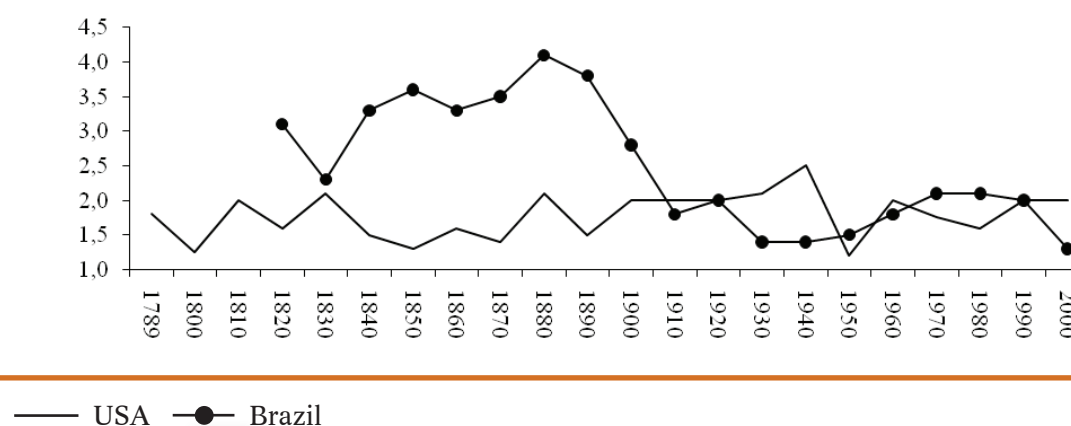
This section examines patterns of higher education and geographic mobility of members of the Supreme Courts of Brazil and the United States, thus contributing to the process of revealing other important differences and similarities about the formation of the two countries' judicial elite.

One fact strikes one from the start: over the course of their trajectories, the future members of the Supreme Courts of Brazil and the United States emphasised the construction of careers passing through at least two states or provinces on average. Some differences in this regard are nevertheless interesting. Firstly, it is important to underline variations from the aggregate point of view. In the United States, over the course of the period analysed, the overall average of states where future Supreme Court justices developed their careers is 1.86; the vast majority of these individuals (61) worked in two states before arriving at the USSC. Partly, this is owed to the fact that in the United States the practice of the Law is controlled at state level by means of exams, which imposes a high transaction cost on someone who decides to practice the Law in another state.<sup>9</sup> In fact, only one member of the USSC developed his career in more than three states. The person in question is justice Harold Hitz Burton, appointed associate justice in 1945, who practised the Law in Ohio, Idaho and Utah before arriving in Washington DC in 1941 to serve a senatorial term. As for

the Brazilian case, the overall average of states is one point higher, 2.85, with a significant number of outliers. In all, 19 individuals developed their careers in more than five states or provinces, with four standing out, ministros João Antonio de Araújo Freitas Henriques (appointed in 1886), Henrique Pereira de Lucena (Baron of Lucena, appointed in 1890), Francisco de Faria Lemos (appointed in 1892) and Antônio de Souza Martins (appointed in 1894). They worked in no less than nine different states or provinces before joining the summit of the Brazilian Judiciary; they had long careers mainly in the second half of the imperial period, with passages through several legal, political and coercive bodies.

From the point of view of the historical series, once again we find important variations. Whereas the US average remains stable at around two states per justice during practically the whole of the United States' political history, Brazil displayed quite high peaks, reaching averages of 4.1 and 3.8 states/provinces per ministro in the 1880s and 1890, respectively. From the 1900s, we see a significant decrease in this average, which went to 2.8 (hence approaching the US level) already in the 1910s. Thereafter, both began exhibiting similar patterns, which remain to this day, as can be seen on Graph 4

**Graph 4** Number of states/provinces attended over the course of the career



It is interesting to observe that the period of great mobility in the careers of STJi/STF ministros, which corresponds to those appointed from 1840 to 1890, refers to those whose careers unfolded during the Empire. As mentioned above, these were juízes de fora, later juízes de direito (so-called letrados or togados), within the remit of the ministry of Justice Affairs. The ministry would make the judges circulate throughout various provinces and regions of the country precisely to avoid the development of more permanent links between them and local political elites, thus favouring the establishment of a nationwide political elite (Carvalho 2003). The drop seen from 1910 mainly reflects the creation of state justice systems. This meant that legal careers linked to the State (judges, prosecutors etc) lost their national character and were placed under the responsibility of each state in the recently

created federation, whereas before they were linked to central government. The drop only after 1910 rather than during the 1890s, as might have been expected, means that only after that time did individuals start entering the court who had made their careers already under the federal system. Put differently, those who joined the court during the first two decades of the Republic (1890s and 1900s) had professional trajectories still bound up with the model adopted during the Empire. In the United States, in turn, the standard was always state-based, which almost always linked the individuals more to the states than to the central government. This resulted in an almost permanent average of reduced territorial mobility in comparison with Brazil's during the imperial period.

In parallel with other variables, the indication of place of birth constitutes an important indicator of the states that have most served as sources for the recruitment of members of the Supreme Courts of Brazil and the United States, allowing one to reveal the weight of each state or region in the two countries, as well as the relations of geographic concentration/dispersion over the different territories. In Brazil, as can be seen on Table 4 below, there is a predominance of the Southeast region among the appointees. The states of Rio de Janeiro, São Paulo, Minas Gerais and, with a lot less weight, Espírito Santo (with two ministros) together account for 53.1% of the total number of cases. The weight of the state of Bahia, though relevant from the aggregate point of view, is owed almost entirely to those appointed to the STJ during the imperial period. Of the 51 ministros from this state, only ten were appointed after 1900. A similar phenomenon occurs with Pernambuco, which has not had one of its own on the STF since the 1930s. The fall in these states' participation seems to be matched by the rising numbers of appointees from São Paulo and, to a lesser extent, from Rio Grande do Sul. In turn, the presence of natives from the states of Rio de Janeiro and Minas Gerais is evenly distributed over practically the whole of Brazilian political history.

**Table 4** Geographic distribution of members' state/province of birth<sup>1</sup>

Brazil	United States
Rio de Janeiro – 52 (19.1%)	New York – 13 (11.7%)
Bahia – 51 (18.8%)	Virginia – 10 (9%)
Minas Gerais – 39 (14.4%)	Massachusetts – 9 (8.1%)
São Paulo – 27 (10%)	Kentucky – 8 (7.2%)
Pernambuco – 19 (7%)	Maryland – 6 (5.4%)
Rio Grande do Sul – 18 (6.6%)	Pennsylvania – 6 (5.4%)

<sup>1</sup> There are three ministros of the Brazilian imperial period whose places of birth could not be ascertained, making a total of 271 cases under analysis in this table. As for the US case, there is information available regarding the place of birth of all the members of the Supreme Court.

With reference to the USA, there is a reasonable geographic concentration in states that joined the Union earlier on (i.e., those that constituted the first English colonies independently of the metropolis), like New York, Massachusetts and Virginia. But at least

since the second half of the 20th century, one seems to be faced with a strong dispersion in the origin of Supreme Court justices, with the presence of newcomer states, such as Illinois (with four appointees), California (two) and Texas (one), among others. So for example, since 1950, New York has only contributed two justices, Massachusetts one, and none from formerly relevant states like Virginia, Kentucky and Pennsylvania.

Another item of information — probably even more important in this sense — is the state where future members of the Supreme Courts obtained their legal training. I say legal training rather than Law school for a very simple reason. Unlike in Brazil, in the United States for a long time a Law school diploma was not necessary for one to work as a lawyer or judge. During the 18th and much of the 19th century it was common for operators of the Law to be trained simply reading the Law, which could be done individually (self-taught) or working as an apprentice of an experienced lawyer. Once such reading was completed, the individuals could sit Bar exams and if they passed they could practise the Law within the respective jurisdiction. Only in recent times have justices started being trained in Law schools. Benjamin Curtis, appointed in 1851, was the first justice to have attended one such institution. But over time, especially over the 20th century, Law schools became a compulsory stop for anyone wishing to pursue a legal career. The last justice not to have attended Law school was James Frances Byrnes, appointed in 1941. In all, 44 justices (equivalent to 39.6% of the total) did not have Law school diplomas, having simply read the Law; eleven members of the USSC had both forms of training (reading the Law and attending Law school); and another 56 justices attended Law school only. This is an element, therefore, of the professionalization tendency of the US Supreme Court, and of judges in general in the United States since the 1950s, marked by the ascent of graduates from formal higher education in Law (Provine 1986; Baum 2010, 50-9).

Differently, in Brazil the standard always was formal legal training in higher education institutions for those seeking a career in the field. This fact certainly was reinforced by the centralized character of higher education in Law during the Empire, when legal education were directly regulated by central government with the purpose of forming its political elite (Adorno 1988; Carvalho 2003). Since then, legal education has been gradually decentralized, firstly with the Reform of Free Legal Education in 1879, then with the Proclamation of the Republic and the victory of the federalist project (which brought to the state level the locus of the country's political elite education) and lastly with the emergence of private Law schools and of postgraduate education, the latter more recently (Venancio Filho 2004). Hence, in Brazilian history there is a single individual who sat on the Supreme Court without having a strictly legal academic background. His name was Pedro Machado de Miranda Malheiro, appointed onto the first Supreme Court of Justice of the Empire in 1829, and whose trajectory is worthy of note, to say the least.

Born and raised in Portugal, he held a bachelor's degree in Philosophy and a doctorate in Canon Law (Cânones) and not in Law (Leis, which emphasised Roman Law and was the traditional route for those in pursuit of a legal career) from the University of Coimbra, and was also Monsignor acolyte of Lisbon's Holy Patriarchal Church (Monsenhor acólito da Santa Igreja Patriarcal). When Portugal was invaded by French troops in 1808, he recruited and organized battalions to defend the Minho region in the north of the country. As a vassal of the Portuguese king — and following the example of his great-grandfather Estevão Machado de Miranda, who fought in the Portuguese Restoration War of 1640 — he became sergeant major (sargento-mor) of the Vila de Guimarães battalion, Portugal. He was promoted to major in 1810 and appointed appellate judge (desembargador) the same year by Prince Regent Dom João. In 1817, he was made chancellor (chanceler-mor) of the Kingdom of Brazil. After the Proclamation of Independence, he took Brazilian nationality and remained chancellor-mor of the Empire. He was eventually appointed to the Supreme Court of Justice in 1829, and died almost ten years later, in 1838. As one can see, his career reproduces the bonds of loyalty and chivalry typical of the political elite of the period in Brazil, which included the preservation of relevant links with the Portuguese elites.

Therefore, in order to adequately calculate the states in which the members of the US Supreme Court obtained their respective legal training, some criteria were set. When a justice obtained his/her legal training in more than one state, generally reading the Law in one and going to Law school in another, each one was computed individually, so that the total number of cases under analysis rises from 111 to 122. Table 5 sets out the results of this analysis for the two countries.

**Table 5** Geographic distribution of members' state/province/country of legal training

Brazil	United States
São Paulo – 73 (26.6%)	Massachusetts – 21 (17.2%)
Portugal – 69 (25.1%)	New York – 18 (14.7%)
Pernambuco – 66 (24%)	Connecticut – 12 (9.8%)
Rio de Janeiro – 32 (11.6%)	Virginia – 8 (6.5%)
Minas Gerais – 14 (5.1%)	Ohio – 8 (6.5%)

It is clear that in Brazil the five main states, provinces or countries of education of the country's judicial elite — São Paulo, Portugal, Pernambuco, Rio de Janeiro and Minas Gerais — total no less than 92.7% of cases. The picture for the United States is very distant from this reality. Here, the five states that contributed the most to the formation of the country's judicial elite — Massachusetts, New York, Connecticut, Virginia and Ohio — make up 54.9% of the total. And to reach a percentage similar to the Brazilian (92.6%), one must add the share of no less than nineteen different states and countries, i.e., practically four

times as many as seen in the Brazilian case. Besides the five already mentioned, the other fourteen states and countries that make up the list of centres of legal training in the USA are Pennsylvania (6), Kentucky (5), Michigan (4), Maryland (4), New Jersey (4), California (4), Georgia (3), Tennessee (3), South Carolina (3), Illinois (2), Minnesota (2), North Carolina (2) and the District of Columbia (2), as well as the former metropolis, England (2).

In fact, the latter is deserving of comment. Whereas over 25% of the whole Brazilian judicial elite in all the country's history got its training in the former metropolis, Portugal, remaining to this day the second most important centre of legal training for the judges of Brazil's Supreme Court (behind the state of São Paulo, which only overtook Portugal in the 1990s), in the United States this influence is much more slight (by a factor of about fifteen). As we have seen, only two USSC justices obtained their legal training in England, which amounts to just 1.6% of the total. The influence of the former metropolis is further diluted when one considers that one of the justices who studied in England also studied in his home state, South Carolina. Moreover, over the course of the court's history, the main centres of legal training for the future judicial elites of the United States are the Law schools of the universities of Harvard, Yale and Columbia, with 17, 8 and 7 justices, respectively. Therefore, there is not a strongly dominant pattern present, but rather a tendency to distribution among different educational centres for future USSC justices. Harvard Law School trained 15.3% of the total, Yale just 7.2% and Columbia no more than 6.3%. These three institutions together trained only 28.8% of the total number of members of the US Supreme Court. A very different picture emerges in Brazil: the Law schools that nowadays are part of the University of São Paulo and of the federal universities of Pernambuco and Rio de Janeiro, as well as the traditional University of Coimbra Law School educated 25.5%, 24%, 10.9% and 25.1%, respectively, of the total number of members of Brazil's uppermost judicial body, making up no less than 85.7% of the universe of analysis.

The centrality of certain states and institutions in the formation of the Brazilian judicial elite is consistent, therefore, with the well known idea of the constitution of common socialization spaces as a way of lending homogeneity to the country's political elite (Adorno 1988; Carvalho 2003; Venancio Filho 2004). Although historically this pattern is rather accentuated, it has been gradually diluted towards greater plurality of legal training forums: firstly, in the mid-19th century, with the breaking of the legal training monopoly held by Coimbra and the consequent ascent of São Paulo and Pernambuco Law graduates; later, in the late 19th century and early 20th century, with the rise of free Law schools in states such as Rio de Janeiro, Minas Gerais and, to a lesser extent, Rio Grande do Sul. Starting in the 1950s and 1960s, one finds the presence — a discreet one, granted — of graduates from other states, like Bahia, Ceará, Maranhão and Amazonas, among others. Lastly, in recent years, one observes the ascent of individuals educated in private higher

education institutions, such as the Catholic universities of Rio de Janeiro, Rio Grande do Sul and Minas Gerais, among others, further fragmenting the spaces of legal training of the members of the country's Supreme Court. In the United States, on the other hand, the tendency has always basically been one of fragmentation in judicial elite education. Even today, when the higher education system is considerably consolidated, only a few universities constitute polarizing centres, like Harvard, Yale and Columbia, though less emphatically, as has been shown. In turn, the tutorship system that characterized legal training during the 18th and 19th centuries further intensified this centrifugal tendency, giving rise to a rather more heterogeneous judicial elite than the Brazilian on this count.<sup>10</sup> In the Brazilian case, one also observes that the obtainment of postgraduate degrees has constituted an important element in recent times. This trend has gradually expanded since the 1960s, reaching high levels in the 1990s and especially in the 2000s, when practically all the members had doctorates in Law before entering the court. Between 1980 and 2008, of the 29 ministros appointed to the STF, eleven had concluded doctorates before taking office, while two had master's degrees and another two had postgraduate specialization diplomas. The principal institution in the conduct of these studies is the University of São Paulo, which contributed four doctors and one master, followed by the Universities of Paris, which contributed three doctors to the court.<sup>11</sup> Along the same lines, another element that had gained ground lately in Brazil is academic experience abroad. This type of training, which was fundamental to the Brazilian political elite during much of the 19th century — with the University of Coimbra constituting its most immediate symbol — today seems perfectly consistent with the professionalization tendency of the country's judicial elite and of numerous Brazilian jurists generally (Dezalay and Garth 2002; Engelmann 2008b), as well as with the recent trend of international circulation by Brazilian ruling elites in several fields, including the economic and administrative sciences in particular (Almeida et al. 2004; Engelmann 2008c). From the 1990s onwards, and with added strength from the 2000s, what one witnesses in that future STF ministros increasingly circulate in overseas institutions as visiting professors and researchers, or conduct their postgraduate studies abroad. Of the fifteen ministros appointed after 1990, seven — or 46.6% of them — had some experience of an academic nature outside Brazil, the main destinations being the United States (5) and France (3), as well as Germany and the UK, with one each.<sup>12</sup> This process therefore indicates that the recent diversification of places where members of the Brazilian judicial elite obtain their Law degrees has gone hand-in-hand with the growing importance accorded to postgraduate courses, the latter concentrated in a single national institution (the University of São Paulo) and in foreign institutions.<sup>13</sup>

With respect to the beginning of the career, there are also important differences between the two cases. The first is the type of profession taken up right after the conclusion of legal

studies. In the United States, there is a practically universal tendency to self-employment as lawyers. Between 1789 and 2008, only eight justices — or 7.2% of the cases — did not start their careers along this path, all of whom in recent times. Therefore, it is interesting to note that this pattern has only been slightly altered of late. From the 1960s onwards, a growing percentage of members of the USSC have begun their professional lives in posts linked to the legal defence of the State (3 cases), as clerks of Supreme Court justices (3) and as academics in the legal field (2). Curiously, in Brazil the patterns have inverted. During the country's early political history, the emphasis was on the recruitment of ministros who had begun their trajectories as judges (*juízes de fora*, *juízes de direito* and *juízes municipais*), as occurred almost universally until the 1890s, when prosecutors (*promotores públicos* and *promotores de justiça*) started appearing on the scene. But more recently, especially from the 1980s, those who began their professional trajectories as lawyers have gained more ground.

Another difference between the two realities regarding the beginning of careers relates to the state/province/country where it occurred. As noted with respect to the states of birth and legal training, one also notices greater concentration in the initiation of professional life in certain states among future members of Brazil's highest court in comparison with their US peers. By aggregating only the five most relevant states in relation to this variable, one obtains a total reaching 67% in the Brazilian case, with the states of Rio de Janeiro, São Paulo, Minas Gerais, Bahia and Pernambuco. The states in question for the US reality are New York, Ohio, Kentucky, Massachusetts and Tennessee, but the figure reaches only 44.1%. The situation is even more acute when one considers the data relating to the state where members of the two Supreme Courts were working when they were appointed. As displayed by Table 6, the convergence to the capital is far more pronounced in the Brazilian than in the American case. By adding Rio de Janeiro (and the old Distrito Federal) and the current Distrito Federal, one finds that 61% of the ministros (167 of them) were already in the national capital immediately before being appointed to the STJi/STF. In the US case, although the proportion is also high, it reaches only 34.2% of cases. Moreover, the concentration in just a few states, once again, is rather more accentuated in the Brazilian case. Right before their appointment, 81.8% of the total number of ministros were in Rio de Janeiro, the current Distrito Federal, Bahia and São Paulo.

**Table 6** Geographic distribution of members' last posting (state/province)

Brazil	United States
Rio de Janeiro (and old Distrito Federal) – 132 (48.2%)	District of Columbia – 38 (34.2%)
Distrito Federal (current) – 35 (12.8%)	Massachusetts – 9 (8.1%)
Bahia – 31 (11.3%)	New York – 8 (7.2%)
São Paulo – 26 (9.5%)	Ohio – 8 (7.2%)
	Pennsylvania – 7 (6.3%)

This difference in the centripetal tendency of the two capitals can be explained to a large extent by the practice of regional representativeness that has basically always been present in the appointment of USSC justices, especially in early days. For a long time, places on the court were in fact related to where in the country justices came from, the circuits. These were geographic catchment areas of federal appeal courts that covered a given number of states and were themselves presided over by Supreme Court justices, so that appointing a new member of the USSC meant at the same time appointing a new member to the circuits, hence the demand for judges' regional representativeness — that is, more because they were part of a regional appeal court than of the country's Supreme Court (Daniels 1978). Notwithstanding the fact that this rule no longer exists from the formal point of view as the boundaries and number of circuits changed and as the country incorporated more territories as states, it is interesting to note that the pattern remains in terms of reinforcing state and regional linkages more than those with the Union, differently from what has historically occurred in Brazil.

## Discussion

This article has examined the career profiles of individuals recruited to the Supreme Courts of Brazil and the United States over the course of practically the whole history of the two countries. It has observed relations between judges and other professions within the State apparatus, as well as the social origin and education of the Brazilian and US judicial elites. Rather than indicating fresh considerations derived from the data presented, the intention in this section is to summarize its findings and to articulate these with more general views about the political formation of Brazil and the United States.

Firstly, the judicial elites of Brazil and the United States seem to reproduce that which is routinely suggested — though rarely tested — in comparisons between the State-building processes of these two political communities. The vast majority of variables discussed in the preceding pages indicate that Brazil and the USA underwent processes whose characteristic elements may be typologically aligned along the two extremities of the dichotomy between political centralization and fragmentation.

On the Brazilian side, one observes the primacy of the idea of political centralization and of links with a national political elite that surpasses its constituent parts, denoting a process of State-building that clearly prioritized what Mann (1984) called despotic power, i.e., the differentiation between political elites and other social groups, as already observed with reference to the Brazilian case by Reis (1998). The strategy really seems to have been that identified by Carvalho (2003) in his classic work, i.e., prioritizing the construction of the political order and not its capillarity among society — the so-called infrastructural power, to

use Mann's terminology. In this sense, one understands the geographic concentration of the Brazilian judicial elite for over a century around a small number of centres of education and states of origin, as well as the ample circulation in varied postings, whether of a legal nature or not. One thus understands even the presence of members of the Brazilian judicial elite in activities that are typically disciplinal of social life, such as those related to the administration of police forces. As we have seen, this experience clearly differs from that of the USA, where at no time judges who sat on the Supreme Court had previous experience in such activities, and even any experience in military activities occurred only as a result of compulsory military service. Therefore, judicial professions in Brazil seem to be more articulated with the maintenance of social order than with the ultimate debate on the interpretation and meaning of legal rules, at least in historical perspective. In this sense, there are some elements that are apparently paradoxical, but that clearly articulate with this logic: the greater geographic circulation in Brazil, mainly during the imperial period, occurred as a means to avoid linkages with local elites, something apparently inevitable in the United States.

On the American side, the traits of the judicial elites indicate ideas of fragmentation and dispersion, denoting a national political community that is clearly articulated and constituted with the local, regional or state level as the starting point. Even the remarkable political experience of judges in the USA seems to operate along these lines. Maybe for this reason such experience is greater in the legislative arena, where linkages with geographically delimited groups (local, regional or state) are almost inevitably more numerous. Judges in the United States seem to reproduce and resemble the political elite as a whole, being more present among them those who began their careers as lawyers and not straight away as judges, as in Brazil. Once again, direct contact with the State apparatus takes place later in the day in comparison with the Brazil's experience, where the connection with the national political elite for a long time tended to start rather earlier. This suggests another conclusion: in the USA, the idea of representation of private interests (suggested by the practice of the legal profession) seems to constitute the initial stage of the socialization of future USSC members, whereas in Brazil the initial activities of future STJi/STF members possess a more public character or, to be more precise, a more governmental character.

Narrowing down our attention to the Brazilian case, therefore, we reach a relevant conclusion. At least in this universe of analysis, and bearing in mind the comparative perspective in relation to the US reality, this study contributes towards the long-running debate over the concentrated or fragmented nature of the national political system, especially during the initial moments of its formation. This is a debate involving authors like Faoro (2001) and Schwartzman (1982) on the one hand, and Duarte (1966) and Holanda (1995) on the other. As mentioned, the arguments in favour of the centralizing interpretation of Brazil's process of political formation are shown to be more persuasive in this study.

In conclusion, one might suggest a simple metaphor to illustrate this article's findings. The US case would be represented by the Latin motto present on the country's Great Seal. *E pluribus unum* (or "Out of many, one") reinforces the ideas of fragmentation and diversity, and especially of a political unity constituted in the basis of many different elements. For its part, the Brazilian case could be categorized using the saying coined by the Baron of Rio Branco, which is present in the decoration named after him that is awarded by the ministry of External Relations: *Ubique patriae memor* ("Everywhere, the memory of the fatherland"). In an exercise of free interpretation geared to the purposes of this article, it could denote the idea of the primacy of above all national traits (i.e., the fatherland) in every place and in the face of the other elements making up the political community. Moreover, the "memory of the fatherland everywhere" seems to be coherent with the judges' careers, particularly when one considers the profiles of the ministros of the Brazilian Supreme Court during the Empire. The post of *juiz de fora* (through which one had to pass to ascend to the STJ), as we have seen) possesses an almost foreign or diplomatic character, of one who sediments relations between centre and periphery, i.e., between the national political elite and local groups, especially on the basis of the interests of the former. The memory of the fatherland (and the consequent defence of its interests) even in the far corners of the country seems to have been fundamental to the process of State-building in Brazil, at least from the point of view of its agents within the Judiciary.

Translated by Leandro Moura

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## Notes

- 1 The data for José Antonio Dias Toffoli and Luiz Fux, appointed to the STF in 2009 and 2011 respectively, and for Sonia Sotomayor and Elena Kagan, appointed to the United States Supreme Court in 2009 and 2010 respectively, are therefore not covered in the research.
- 2 Though not directly related to the theme and theoretical discussion proposed, the reference in this regard can be directed at many works that adopt the literature on the so-called judicialization of politics, the phenomenon of the expansion of the Judiciary that is allegedly in train in several countries. Adepts of this literature often assume such tendency as a given, without in fact checking in other countries, and sometimes accept the general diagnosis while rejecting it for Brazil without actually establishing a comparison between the case of Brazil and of other nations. Important exceptions to this trend are the works by Taylor and Ríos-Figueroa (2006), Castro and Ribeiro (2006) and Kapiszewski (2008).
- 3 It is worth noting that differently from another piece that partly derived from the same database, this article does not aim to analyse the process of professionalization of the two countries'

judicial elite, discussing the political grounding of such phenomenon. Rather, the objective is to present the trajectories of those who held the post of Supreme Court judge in the two nations, using them as indicators of the profile of the judicial elites at different historical moments of these two realities.

- 4 The website of the Supreme Federal Tribunal has information on the biographies of its members, available at: <http://www.stf.gov.br/portal/ministro/ministro.asp>.
- 56 The database produced under the coordination of Lee Epstein is available at: <http://epstein.law.northwestern.edu/research/justicesdata.html>.
- 6 On this point, see Epstein and Knight (1998).
- 7 The proportional turnover per year is calculated by dividing the annual average of appointments by the average size of the courts, as per Table 1. I thank one of the anonymous peer reviewers of the Brazilian Political Science Review for the suggestion to create this variable.
- 8 I thank one of the anonymous peer reviewers of the Brazilian Political Science Review for this comment.
- 9 Even if one considers that some universities in which future justices undertook their undergraduate studies may constitute socialization spaces central to the formation of a more homogenous political elite, this hypothesis is not backed up by the data. The four main universities for undergraduate studies (Harvard, Yale, Princeton and Stanford) taken together add up to 34 cases, or just 30.6% of the total number of cases.
- 10 It is important to stress that undertaking postgraduate studies is not an adequate indicator among the justices of the US Supreme Court, since the university course in Law in the United States is itself a graduate degree. The title obtained — Juris Doctor or simply J.D. — is sufficient to qualify the holder to teach at higher education level. For this reason, I have opted to mention this variable only for the Brazilian case, and not for the American.
- 11 The sum-total of countries is not equal to the number of ministros who had this kind of experience because some of them conducted studies in more than one country.
- 12 The same preponderance of the University of São Paulo in the education at postgraduate level of the contemporary Brazilian political elite has already been observed in other areas, like in the Social Sciences field, for example (Loureiro 1997; D'Araújo and Lameirão 2009).

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