

The Politics of “Suggestions of Immunity”

An Empirical Analysis of the State Department’s Sovereign Immunity Decisions from 1952 to 1977

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Motivation

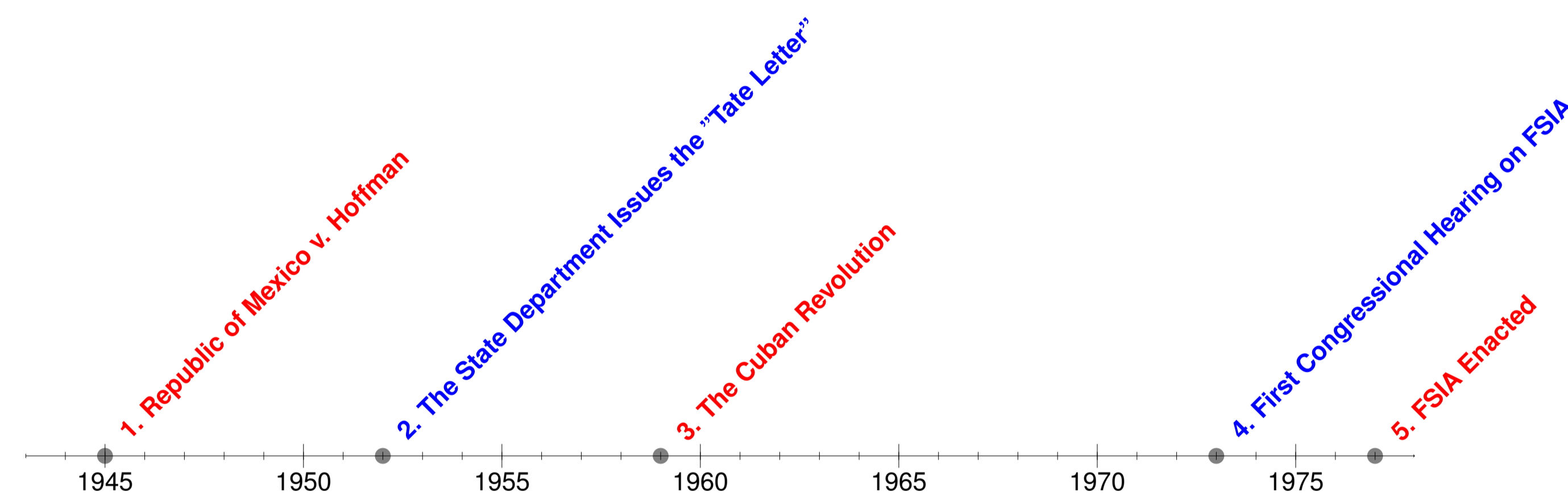
“The Courts quite rightly should look to the executive branch for guidance on the political question of what is necessary in the interest of good relations with other friendly powers.”

-Prof. Michael H. Cardozo, in the Harvard Law Review, 1954.

“[T]he foreign relations interests of the United States as well as the rights of litigants would be better served if [sovereign immunity decisions] were decided by the courts rather than by the executive branch.”

-Charles N. Brower, State Department Legal Adviser, 1973.

History



1. Supreme Court reaffirms importance of courts deferring.
2. “Tate Letter” adopts a restrictive theory of sovereign Immunity.
3. Cuban Revolution creates a flood of cases as property is seized.
4. State Department begins lobbying Congress to pass legislation to have courts make these determinations.
5. The Foreign Sovereign Immunities Act goes into effect ending State Department discretion over immunity decisions.

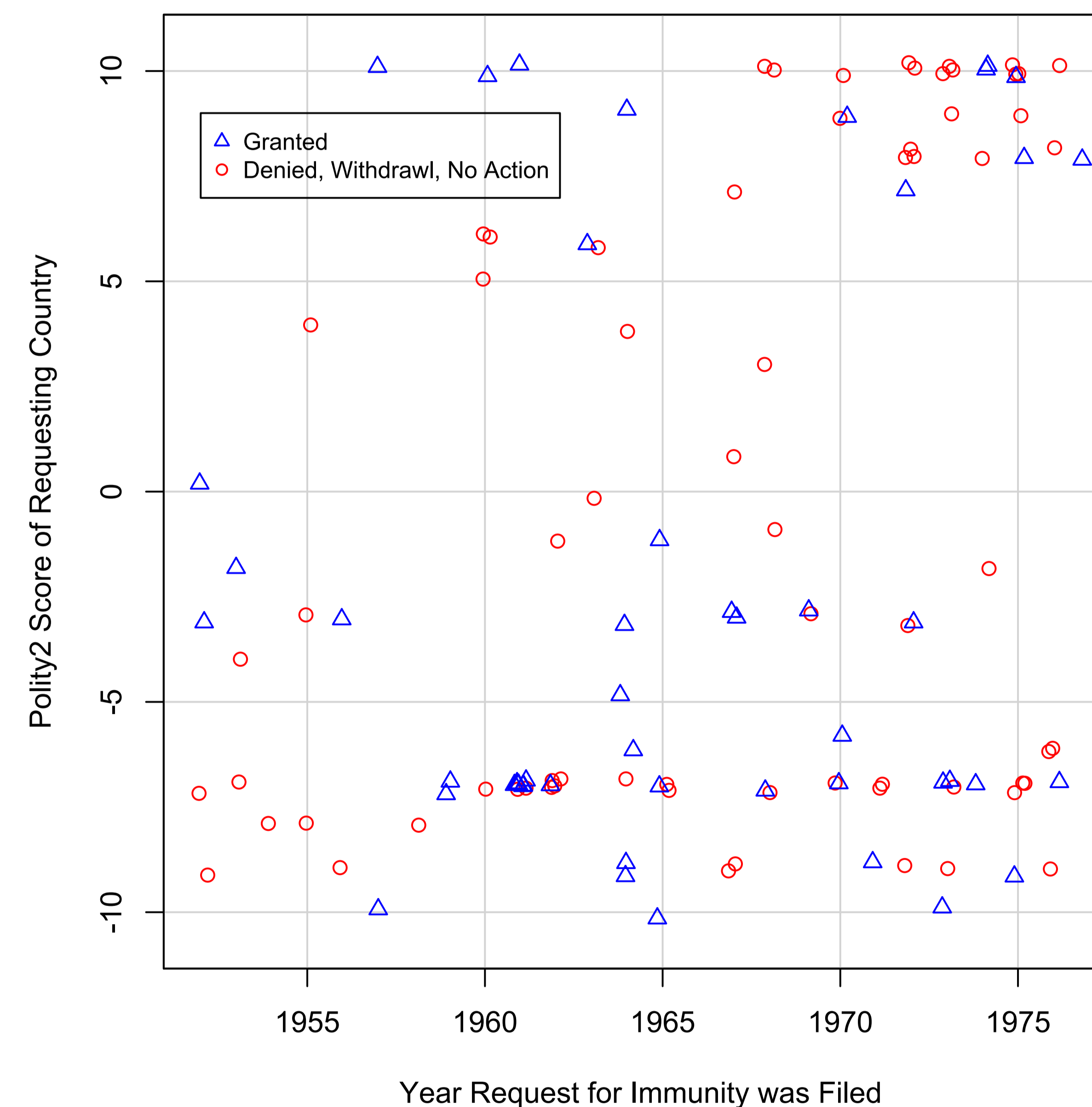
Questions

- What factors influenced the State Department’s sovereign immunity decisions during this period?
- Why would the State Department give away the power to determine which countries would receive immunity?

Hypotheses

1. Selection effects largely influenced who filed claims.
2. Cold War politics impacted the outcome of decisions.
3. Important allies were more likely to receive immunity.
4. The power was transferred when it became hard to reward allies.

Immunity Requests



Data

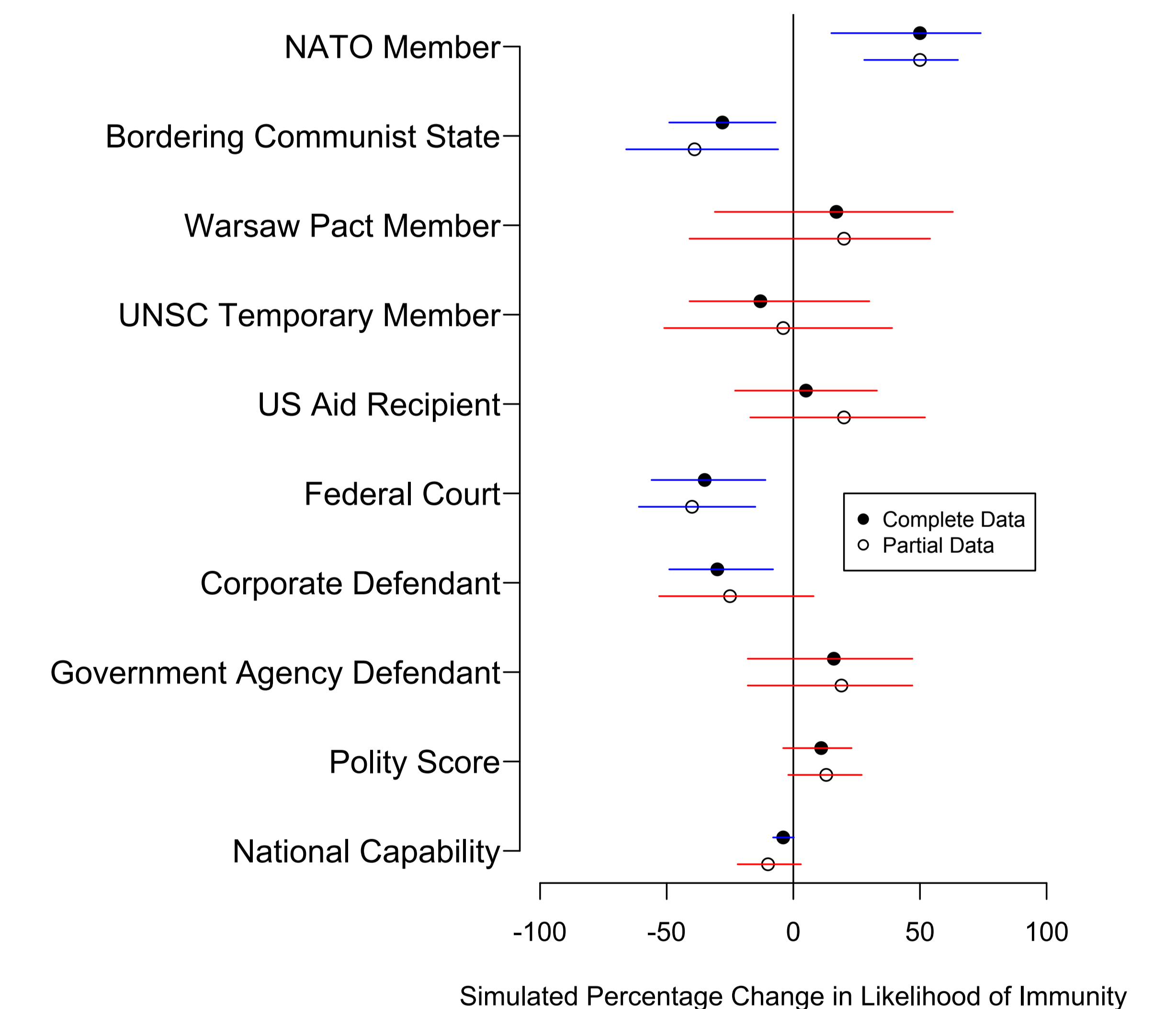
An original dataset of the 118 requests for immunity from 1952 to 1977 was created that includes variables to capture:

- Facts about each action that was filed;
- The characteristics of each requesting state;
- The relationship between the U.S. and the requesting country.

Estimation

- Model → probit regression with immunity as the D.V.
- Data → all models estimated with complete data and excluded cases where request was withdrawn or ignored.
- Controls → trade flows, political party, and regional dummies.
- Simulation → first differences simulated by estimating full model for each variable while holding other variables at their mean.

Regression Results



Implications

These results suggest a number of findings:

- NATO allies were more likely to receive immunity.
- Important countries bordering communists filed bad requests.
- Sophisticated plaintiffs with high stakes claims in federal court made countries less likely to receive immunity.
- Country characteristics had little impact on decisions.