

**Activists vs. Legalists:
The Mexican Supreme Court and its Ideological Battles**

by

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Introduction

Some democracies have the advantage of emerging from a "constitutional founding" moment that breaks from the authoritarian past by fundamentally redistributing power from the autocrats to civil society. Mexico's transition to democracy was different. It was not accompanied by the emergence of a new social consensus about the "appropriate limits of state power" (Weingast, 1997). Drafted during the autocratic period, the constitution still in place today markedly favors the state vs. the citizenry. The transition to democracy did entail the creation of powerful political institutions to restrain power, most notably the Federal Electoral Institute and the New Mexican Supreme Court. However, these institutions were designed with the explicit intent to find credible arbiters of electoral and politico-constitutional battles among the politicians rather than to expand citizens' rights.

Also present during the autocratic political era, these political battles had normally been solved by the president rather than formal political institutions such as courts. The president could arbitrate political battles because politicians in the country possessed powerful incentives to obey him. The system worked because the president was the leader of the hegemonic PRI; this party sanctioned non-compliance with the president's decisions with expulsion from the party; and politicians had no credible exit option other than resorting to violence (Magaloni, 2008).

As opposition political parties increasingly gained controlled of subnational office in the late 1980s and early 1990s, the foundations of the president's authority began to erode and the specter of political violence enlarged. To solve political battles, the president would need to either side with the PRI, in which case the opposition would contest his decision through protests and sometimes violence, or the president would side with the opposition, in

which case the PRI could rebel against its leader. The 1994 constitutional reform empowered the Supreme Court to solve the dilemma of enforcing political order in an increasingly multipartisan federal setting.

A theory accounting for the creation of powerful courts in autocratic regimes stresses the need to create a credible commitment to property rights in order to increase investment (Moustafa, 2006). Applied to the Mexican context, the argument would be that president Zedillo wanted to signal to the international financial community his commitment to the market-oriented reforms and private property. Judicial review was necessary, according to this account, to credibly limit government predation and the risks of expropriation. The problem with this argument, as we will see in this paper, is that the creation of a powerful Supreme Court entailed more risks to investors because it made the *existing constitution* (which combines strong nationalism and statism) more binding.

Ginsburg (2003) provides an alternative account of why autocratic regimes might choose to empower constitutional courts. He argues that autocrats will create powerful judicial review institutions as a form of “political insurance” when they calculate that they might lose power in the future. Finkel (2008) employs a related argument to explain the 1994 constitutional reform in Mexico. This theory is related to various works on judicial independence, including Ramseyer (1994) and Landers and Posner (1975), as well as works on bureaucratic insulation (Moe, 1990; McCubbins, Noll and Weingast, 1987 and 1989) and civil service reform (Geddes, 1994).

Magaloni's (2008) account on the 1994 constitutional reform is consistent with these works in stressing that a powerful Supreme Court in Mexico could only come about when power became diffused. However, she stress that power holders' decision to empower the

Supreme Court was fundamentally influenced by the desire to find alternative ways to enforce political order. She argues that President Zedillo envisioned the constitutional reform during the campaign for the 1994 elections, much before it was clear that the PRI would soon lose power. Moving beyond the question of why former power holders chose to empower the Supreme Court, in this paper we analyze the role this institution has played in Mexico's emerging democracy. We ask three fundamental questions. Has the Mexican Supreme Court exerted its independence from pre-existing power holders? How has the Court's behavior changed with alternation of political power in office? And what are the justices' *policy preferences* and the main lines of dissent within the Court?

The political science literature on comparative courts has disproportionately focused on courts' decisions to rule against or in favor of the government. This emphasis extends naturally from the branch of the democratization literature that looks at the extent to which separation of power and limited government are more than window-dressing in new democracies. However, from this emphasis on courts' capacity to constrain the acts of the executive (or in our case, pre-existing power holders), we learn little about the policy content a Court's rulings. Even if one were to find a clear pro-PRI bias in the behavior of the Supreme Court, without studying justices' policy preferences, the reasons for these biases would remain unclear –e.g., does the Court rule in favor of the PRI because it blindly conditions its behavior on partisanship or because the Court is closer to this party's policy preferences? Put in other words, we want to know if the underlying partisan cleavage translates into the Court by shaping justices' policy preferences in some meaningful way.

In this paper we thus depart from the dominant approach in the court comparative literature in that we seek to understand coalition making *within* the Mexican Supreme Court so as to unpack the underlying ideological cleavages dividing justices. To do this, one

requires a measure of the ideal policy positions of each justice. Existing models of Court behavior, whether attitudinal (Segal and Spaeth, 1993) or strategic (Eskridge, 1991; Epstein and Knight, 1998; Helmke, 2002), all focus on the policy preferences of justices as key explanatory variables (Martin and Quinn, 2001).

The paper proceeds as follows. The first section presents a short overview of the authoritarian legacy as it relates to role the Supreme Court played in the political system and its traditional subservience to the presidency. The second section discusses the 1994 constitutional reform. The third section focuses on a descriptive analysis of the constitutional actions and controversies decided by the Court from 1995 until 2007. The fourth section presents an econometric analysis of the Court's rulings. We assess if there are strong partisan biases in the Court's rulings, on the one hand, and if there has been systematic changes in the Court's behavior after alternation of political power in office. The final section employs Bayesian Markov Chain Montecarlo (MCMC) estimation techniques to examine the voting record of all justices spanning two partially different Courts. Based on this analysis, we can make relatively precise inferences about justices' ideal points in a two-dimensional policy space. We end with a conclusion.

1. Legacies of Authoritarianism¹

During the long years of autocratic rule by the Institutional Revolutionary Party (PRI), power holders ruled unconstrained by a malleable constitution and subservient courts. The authoritarian political system during the era of hegemonic party rule by the PRI was characterized by a strong *presidencialismo*, a strong dominance of the president over other branches of government deriving from sources beyond the constitution (Carpizo, 1978; Weldon, 1997, Casar, 2002). *Presidencialismo* also implied lack of judicial checks on the

¹ This section draws from Magaloni (2003), and (2008).

executive. Three conditions explained presidential domination over the Supreme Court and the federal judicial power (Magaloni, 2003). 1. During the era of PRI hegemony, the constitution did not constrain power holders, because the ruling party could reverse any rule, *including* constitutional ones. 2. The president exercised a strong control over nominations and dismissals and many justices tended to follow *partisan careers* before or after leaving the Court. 3. The Court had limited constitutional space. Up until 1994, Mexican politicians purposely chose not to delegate enough power to interpret the constitution to the Supreme Court and the federal judicial power, excluding from judicial review virtually all cases with so-called “political content.”

The federal judiciary retained some power to interpret the constitution through the *amparo trials*, which citizens could employ to sue the state for violating their rights or issuing and applying laws that went against the constitution. The official discourse was that the Mexican constitution thus established the necessary conditions for limited government and that federal courts would be in charge of enforcing it. In practice those who confronted the regime, or who had to deal with the police and state bureaucracies, often found themselves at the mercy of government officials and courts that for the most part served the interests of those officials. Courts predominantly followed a literalist criterion of judicial interpretation that favored state officials and established jurisprudence that condoned state abuse rather than expand and protect citizens' rights.

2. Empowering the Supreme Court

Breaking with a long tradition of judicial subservience, the 1994 constitutional reform transformed the Supreme Court, in paper at least, into a true constitutional tribunal. The reform reduced the number of justices from 25 to 11. Life appointments were changed to 15-year terms. By establishing the “constitutional controversies” and the “constitutionality

actions,” the reform significantly expanded the power of the Supreme Court, which can now adjudicate on all sorts of political-constitutional issues.

Through *constitutional controversies*, the Court can adjudicate disputes between different branches and levels of government with respect to the constitutionality of their acts. The Court can now hear conflicts among the executive and the legislative branches; subnational governments and the federation; and the municipalities and the governors. In a federal system with increasing multiparty competition, the 1990s showed, these are the areas where the most important political battles would certainly arise.

Constitutionality actions are a form of judicial review. A constitutionality action can be promoted by 33 percent of the members of the Chamber of Deputies or the Senate against federal laws or international treaties; by 33 percent of the members of the local assemblies against state laws; by the Solicitor General (*Procurador General*) against federal and state laws or international treaties; and by the leadership of any political party registered before the Federal Electoral Institute against federal electoral laws. Local political parties can also promote a constitutionality action against local electoral laws.

To support the constitutional reform, the PRI imposed several limitations to the powers of the Supreme Court. First, the PRI originally refused to delegate jurisdiction to the Court on electoral issues. The Court would not acquire the right to review the decisions of the Federal Electoral Tribunal and to rule on the constitutionality of electoral laws until 1996.

The second way in which the PRI attempted to limit the power of the Court was to make it harder to undo legislation. The reform established that the Court’s decisions on constitutionality actions would *not have the effect to annul legislation unless 8 out of the 11* justices voted against the constitutionality of a law. The reform also established that the

constitutionality of laws must be appealed within thirty days since the enactment of the law or the first act of application.

Third, the reform reduced the stakes of constitutional controversies by establishing that the decisions of the Supreme Court on constitutional controversies would only have effects *inter partes* (suspending the action only among the parties) when a lower level government acts as plaintiff against a higher level one; in controversies between two states; and in controversies between two municipalities from different states.

Finally, the reform gave a de facto veto power to the PRI over the nomination process that would last beyond 2000 by establishing that the Senate will appoint each justice from a list of three candidates sent by the president by a 2/3rds vote . Prior to the reform, the president appointed the justices and the Senate's only role was to ratify the presidential candidate by a simple majority. Although in 1995 the PRI had the necessary super-majority in the Senate to appoint the entire Court on its own, president Zedillo opted to negotiate with the PAN the appointment of some justices so as to bestow legitimacy to the new Court. After the PRI lost the presidency in 2000, all new appointments to the Court have necessarily required support of this party in the Senate.²

3. The Court's Functions in the Democratic Era³

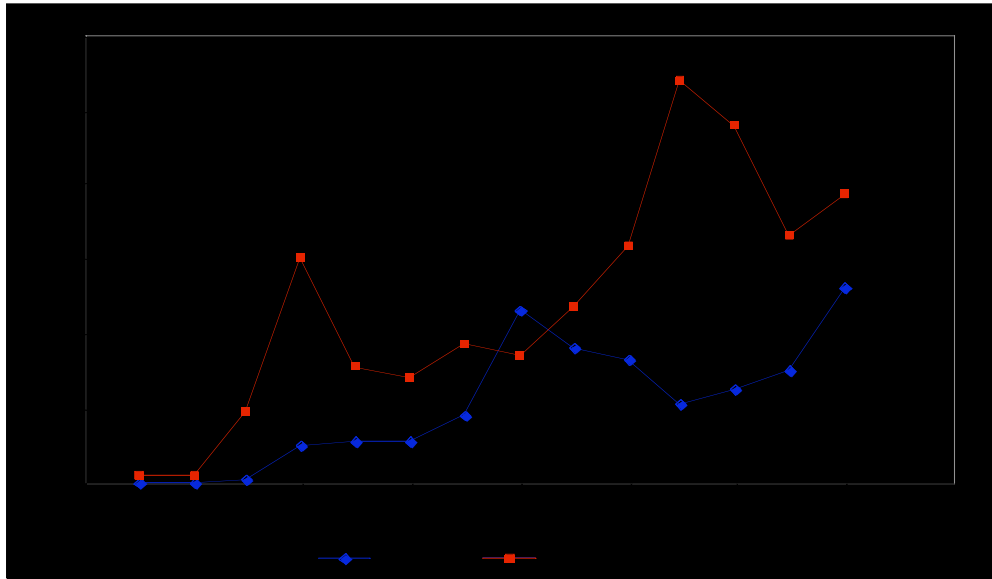
We perform an analysis of the entirety of the publicized decisions of the Supreme Court on *constitutional controversies* and *constitutionality actions* until August 2007. The data comes from Sánchez (2008). Out of the 1,358 Court decisions, 75% were *constitutional controversies* and 25% were *constitutionality actions*. Almost half of these decisions were made prior to the

² Between 1994 and 1997, when the reform was approved, 74% of the Senate seats were controlled by the PRI, 20% by the PAN, and 6% by the PRD. The PRI saw its contingent shrink to 60% in the 1997 midterm election, but even after losing the presidency to the PAN in 2000, the PRI still controlled 45 percent of the Senate.

³ This section draws heavily from Sánchez (2008).

PRI's loss of the presidency in 2000 while the rest of the cases were ruled after the transition to democracy.

Figure 1. Number of Filed *Constitutionality Actions* and *Constitutional Controversies**



*Does not include the indigenous rights controversies. Source: Sánchez, 2008.

Through the *constitutional controversies* the Court is defining and policing the allocation and boundaries of other actors' political powers. Decisions on constitutional battles between municipalities and states and between subnational governments and the federation mostly entail issues of legality, and most often have effects *inter partes* given that municipal governments act as plaintiffs in close to 70% of these trials.⁴ In resolving these controversies between lower and upper levels of government, the Court not only has become the new arbiter of federalism but also performs the crucial role of guaranteeing that conflicts get processed through the existing institutional channels rather than costly political bargaining or violence.

Following Sánchez (2008), we classify *constitutional controversies* in three broad

⁴ From December 1994 to August 2007 municipal governments were plaintiffs in 698 *constitutional controversies* out of a total of 1,016 cases.

categories, which are subdivided into several subgroups. “*Municipalism*” controversies represent 74.4% of the cases. These comprise, among others, controversies over responsibility of office holders, including removal of legal immunity and impeachment of municipal presidents; conflicts over economic resources, including jurisdictional fights over taxes and fees and the distribution of revenues sharing funds and federal transfers; and conflicts over the establishment of “*intermediate authorities*” between the municipality and the state.

“*Separation-of-powers*” controversies represent 17% of the cases and these include conflicts between the powers of a state or the powers of the federation. The most common forms of separation of powers controversies at the local level are encroachments against a state’s supreme court, and at the federal level presidential lawsuits against the majority in Congress predominate.

“*Federalism*” controversies represent 8.6% of the cases. These include conflicts over the distribution of revenue sharing funds between the federation and the states. Other “federalism” controversies include the interstate commerce clause, misuse of federal resources in local elections; decentralization of public schools to the states; declarations of natural reserves; daylight savings time; and conflicts over federal legislation, including the federal budget, and the indigenous rights amendment, among others. We will discuss some of these cases with more detail below.

In an era of divided government, and particularly after the democratic transition of 2000, the Court is increasingly serving as arbiter between the President and the Federal Congress, engaging exceptionally in policy-making. The Federal Congress sued the president 6 times. With the exception of the *controversy* filed against President Zedillo for his refusal to

provide information to the Lower House in the *Fobaproa* case,⁵ all lawsuits were filed by a PRI-PRD congressional coalition against President Fox, of the PAN. The Court declared the unconstitutionality of a presidential act in three cases (*Fobaproa*, *Electricity*, *Fructose*) and dismissed two more (*Programas Sociales* and *Federal Fiscal Tribunal*).

The first of such cases was the *constitutional controversy* against the regulation of the Electricity Law (*Electricity*, 2001) that we will describe in more detail below. This was the first of 3 *controversies* challenging the presidential rulemaking power. The other two were the regulation of the Gambling Law (*Gambling Law*, 2004) which was in part *desestimado* after the Court could not reach the majority of 8 votes needed,⁶ and the regulation of the Organic Law of the Federal Fiscal Tribunal (*Federal Fiscal Tribunal*, 2005) regulating the procedure to elect and remove judges. The latter case was eventually dismissed after the president repealed the law without waiting for the Court's ruling.

Other *controversies* against President Fox were the ex-post exemption to imports of fructose from the tax increase passed by Congress (*Fructose*, 2002), and a law suit against the use of radio and television spots to promote social programs to fight poverty, pension funds, and housing aired during the presidential campaign of 2006 (*Programas Sociales*, 2006). This case was dismissed after the president withdrew the publicity. For his part, Vicente Fox sued Congress 8 times (3 in 2003 and 5 in 2004). In 6 of these cases the Court ruled in favor of the president.

State of Mexico (2000) and *Federal Congress* (2005) are two cases that illustrate the

⁵ The *Fobaproa* (*Fondo Bancario de Protección al Ahorro*) was applied in 1994 during the economic crisis to protect all Mexican banks from going bankrupt after the so-called "December's mistake." However, a number of corruption cases involved in the action have been alleged and since then, it has become an object of criticism, especially by the Party of the Democratic Revolution (PRD).

⁶ In fact, trying to reach separate majorities of 8 votes, the Court ended up splitting the case and decided the constitutionality of each of the "games" included in the Gambling Law in 11 different rounds of votes, one per each game.

Supreme Court's function as arbiter of political disputes that entail a constant redefinition of the extent and limits of the powers of the different branches of government, including the executive's right to veto. In 2000, the legislature of the State of Mexico amended the bill that creates the state's Office of Transit and Transportation. Part of the amendment passed by the local legislature appointed a legislative representative to the Office's board of directors. Governor Montiel (PRI) filed a controversy asking the Supreme Court to declare the unconstitutionality of such amendment on the grounds that appointing an active member of the legislature to the Office's of Transit highest decision-making body was an encroachment to the administration.

Probably the most important controversy involving the president v. Congress challenged the latter's opposition against the constitutionality of presidential veto power over the Federal Budget. Until 2004, it was unclear if the president had the power to veto the Federal Budget, approved by the Lower House of Congress only. The issue remained unresolved for decades because, during the PRI's hegemony, the president's control over Congress guaranteed a smooth passage of the president's budget proposal without substantial modifications. When Fox's budget suffered amendments he deemed unacceptable by a PRI-PRD majority, he decided to veto and settle the matter in the Court.

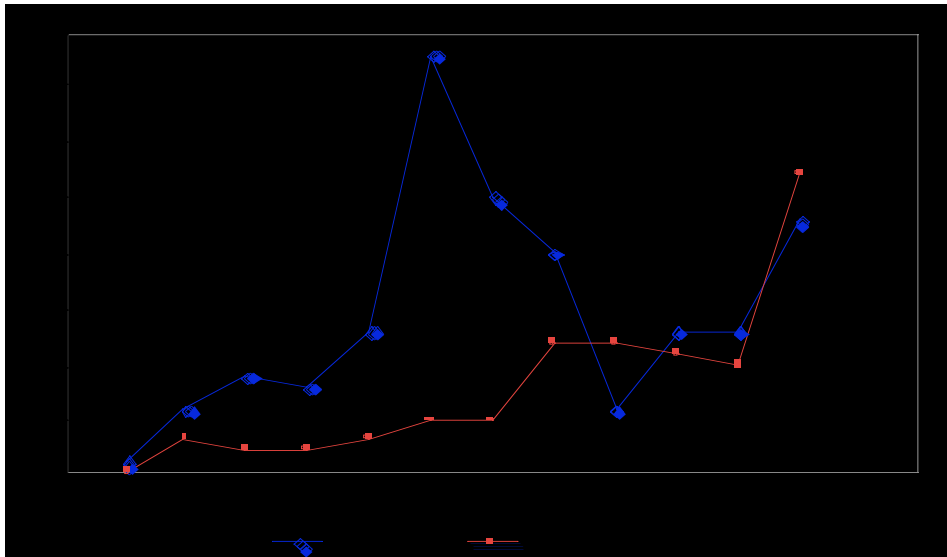
The PRI-PRD modifications to the president's 2005 Federal Budget were substantial and included, among others, more federal transfers and additional resources for infrastructure, education, water, and the armed forces. President Fox objected to the modifications of the Federal Budget. However, a majority of less than two-thirds of the legislators denied the president's right to veto the budget. President Fox asked the Supreme Court to declare the unconstitutionality of the Lower House rejection of the executive's veto. The the Supreme Court had to interpret whether the silence of Articles 42 and 44

excluded the Federal Budget from the legislative procedure –and thus from the executive veto– or if the Budget had to be treated as any other bill, which needs to be negotiated between the executive and the legislature, and in case of disagreement, a qualified majority (two-thirds) is needed to override a presidential veto (Sánchez, 2008).

It took the Court nearly five months to reach a decision. The importance of the case created serious division between the justices. On one hand, there were those who interpreted that the Lower House had unlimited power to modify and approve the Federal Budget (led by Justice Góngora). On the other hand, there were those who considered that the presidential veto power—including the Federal Budget—is an essential mechanism to maintain the system of checks and balances (led by Justice Ortiz). After all, if the Lower House disagreed with the president’s decision it could always override the veto with a two-thirds vote.

An additional argument made by the first group of justices was that even if the Court were to recognize the existence of the presidential veto, *State of Mexico* (2000), and *Aguascalientes* (2005) were binding precedents and the Court should dismiss the case. If the President always considered that he had veto power he should have vetoed the Budget and refused to publish it before appearing in Court. In a decision six to five the Supreme Court declared the unconstitutionality of the rejection of the executive’s veto and the unconstitutionality of the modifications made by the PRI and PRD. The Court noted that in *State of Mexico* and *Aguascalientes* it upheld the executive’s obligation to effectively exercise his veto. However, the Court also noted that the present case was different since there was no certainty from the beginning of the existence of the executive’s right to veto as in *State of Mexico* and *Aguascalientes*.

Figure 2. Type of *Constitutionality Actions*



The Court exercises its power of abstract judicial review most clearly in the *constitutionality actions*. Prior to the democratic transition of 2000, 83% of the constitutionality actions were related to electoral laws. However, as figure 2 shows, after the PRI lost the 2000 presidential elections, political players began to increasingly challenge laws with non-electoral content.

Following Sánchez (2008), we classify constitutionality actions into three broad categories. “*Electoral*” actions represent 58.5% of the cases. The most common of these were: campaign finance; electoral thresholds; the configuration of electoral bodies in the states (Local Electoral Institutes and Local Electoral Tribunals); redistricting; distribution of legislative seats according to rules of proportional representation; due process violations in the enactment of local electoral reforms; and changes to the electoral calendar.

“*Fundamental Rights & Law Enforcement*” actions represent 20% of the cases. These comprise, among other, controversies over tobacco, labor law, and defamation laws; criminal issues such as presumption of accomplice liability, domestic violence, excessive fines, and

lifetime sentencing.

“*Economic Resources & Public Services*” actions represent 21% of the cases and include conflicts over the distribution of revenue sharing funds between the federation and the states as well as conflicts over the provision of public services such as water bill, notary law, and the basis for public sector tenders, among others.

4. Alternation of Political Power and the Court's Behavior

Existing literature suggests that Courts in post-authoritarian environments are likely to serve as status quo keepers (Ginsburg, 2003). Before losing power, the authoritarian governing coalition is likely to make sure that the Supreme Court is filled with justices that are expected to make decisions geared toward protecting the status quo and the former power holders. Future appointments to the Court after alternation of political power takes place and power becomes more diffused will increasingly come to reflect a compromise among the new power holders, leading to a gradual democratization within the Court

However, the vision that Courts would simply act as agents of the former power holders neglects that justices make decisions strategically, in anticipation of how the new power holders would react (Helmke 2002). There are various factors that influence justices' choices. First, Iaryczower et al (2002) argue that courts will need to defer to power holders when the governing coalition holds the necessary legislative supermajority to impeach justices or change the constitution to augment the size or limit the powers of the Court. This approach views courts as primordially motivated to protect the *careers of its members* and its constitutional powers.

Secondly, even if power holders lack the necessary supermajorities to elicit the types of institutional attacks suggested by Iaryczower et al (2002), politicians could still be able to

defy the Court by overriding, disregarding, or ignoring its rulings. The key challenge of a constitutional court, as Vanberg (1999: 3) points out, is that it is “dependent on the cooperation of governing majorities ... to lend force to their decisions.” When politicians ignore or disregard a ruling, these sorts of attacks not only may nullify particular decisions, but “their impact may accumulate over time such that the constitutional court itself becomes an ineffective political institution” (Epstein *et al*, 2001: 128). This second approach presupposes that justices are also motivated by the desire to protect the Court's *institutional reputations* and issuing decisions the other players will comply (Epstein et al, 2001; Smithey, 1999; Vanberg, 1999; and Staton, 2004). The challenge to render a Court's decisions efficacious is particularly daunting in new democracies, where courts are “yet to establish their own independence, legitimacy, or authority (or, for that matter, the authority of their constitutional systems)” (Epstein et al, 2001: 126).

Third, increased fragmentation of power necessarily opens the door for Court activism (Spiller and Gely, 1990; Ferejohn, 1999 and 2002; Bednar, Eskridge, and Ferejohn, 2001; Ferejohn and Weingast, 1992; Epstein and Knight, 1998; Graber, 1998; Rios Figueroa, 2007). Concentration of political power across the branches of government forces judges to defer to power holders and behave strategically in order to avoid having their decisions overturned. But if political power is fragmented, and assuming that judges have policy preferences that diverge sufficiently from the government's, antigovernmental decisions are more likely to occur in environments where political power is fragmented.

Another factor that shapes the behavior of Courts, leading to more activism under fragmentation of power relates to politicians' *demands* for court action. There is likely to be significantly more disagreement among the different branches of government, and among the majority and minority factions in Congress, under conditions of political fragmentation,

leading politicians to take their disagreements to the Court (Gates 1987; Sundquist 1973; MacDonald and Rabinowitz 1987).

These theories provide some insight about how we should expect the Mexican Court to transform as a result of democratization and the diffusion of political power that ensued after alternation of political power in office. First, in Mexico's fragmented political environment, no single political player has the power to impose vs. the Court the types of sanctions envisioned in Iaryczower et al (2002). Thus, presumably the Court should have more leeway to decide according to its "true" policy preferences or, put in other terms, that the justices' ideologies should play a strong role in the way the Court rules. The following section explores in greater detail the ideological divisions within the Court. This section seeks to assess if as a unitary actor, the Court is more likely to rule in favor of the former power holders assuming that more justices have an ideological affinity with those who appointed them.

Second, alternation of political power in office and its consequent power fragmentation should work to increase the Court's "activism," which we define as the tendency to expand its jurisdiction, get involved in policy-making and augment its powers over the other branches of government by striking down legislation or state acts. To assess these hypotheses, we ask if after alternation of political power in office in 2000, the Court increased its propensity to rule against the constitutionality of laws or state acts.

We model the Court's rulings on *constitutional controversies* and *constitutionality actions* separately. Our dependent variable is coded as 1 for cases where the Court ruled the law or act to be unconstitutional and 0 otherwise (we exclude dismissals from the analysis). To assess if the Court changed its behavior after alternation of political power in office, we

include a dummy variable indicating cases decided after the defeat of the PRI in the 2000 presidential elections (*Alternation*). Our expectation is that the Court should become more "proactive" or prone to strike down legislation and state acts as power becomes more fragmented. Hence, the variable *Alternation* should have a positive sign. A second independent variable of interest is PRI-defendant, a dummy for cases in which the defendant was a state organ controlled by the former ruling party. To rule out the possibility that there is a pro-defendant bias in the Court irrespective of partisanship, we add a dummy for PAN-defendant. To test if there was a change in the court's propensity to rule in favor of the PRI after alternation of political power in office, we multiply PRI-defendant and PAN-defendant by the variable *alternation*.

We add a series of controls. For constitutional controversies, we add a dummy variable indicating if the plaintiff was a municipality (*Municipality*), which acts as plaintiff in the overwhelming majority of the constitutional controversies. We also include dummy variables for conflicts where a lower level government (municipality or state) filed a lawsuit against the federal government (*Municipal v Federal* and *State v Federal*). Our model for *constitutionality actions* adds the following controls. We add a dummy variable for constitutional actions that relate to electoral laws (*electoral*). Table 1 displays the results.

The results of the models suggest that alternation of political power in office brought a change in the Court's rulings *only with respect to constitutional actions*; this means that after 2000 the Court has become more prone to strike down laws, increasingly exerting its power in cases where it can exercise abstract judicial review. However, in the constitutional controversies, alternation of political power in office brought no significant change in the Court's propensity to rule against the constitutionality of laws or state acts. Most of these cases, as we said above, involve issues of legality.

A second important finding is that the Court tends to side in favor of the PRI *in constitutional controversies, not in actions*. The variable PRI-defendant is negative and statistically significant in both models, which would appear to indicate a bias in favor of the PRI in both types of trials. The pro-PRI bias in the constitutional actions however, reflects a pro-defendant bias regardless of party. That is, once we add PAN-defendant we obtain that the Court also rules in favor of this party in the constitutional actions, not in the controversies, where this variable has the opposite sign to PRI-defendant, although it is not statistically significant. An important finding is that this pro-defendant bias in constitutional actions appears to disappear after alternation of political power in office.

Table 1. Court's Unconstitutionality Decisions

Constitutional Controversies					Constitutional Actions				
	Model I		Model II			Model I		Model II	
	Coef.	SE	Coef.	SE		Coef.	SE	Coef.	SE
Alternation (2000-006)	0.32	0.23	-0.53	0.63	Alternation (2000-2006)	0.76***	0.22	1.48**	0.70
PRI-defendant	-0.98***	0.32	-1.77***	0.61	PRI-defendant	-1.18***	0.27	-0.44	0.70
PAN-defendant	0.17	0.31	-0.53	0.65	PAN-defendant	-0.80**	0.32	-0.20	0.75
Alternation*PRI-defendant			1.05	0.69	Alternation*PRI-defendant			-0.93	0.77
Alternation*PAN-defendant			0.85	0.58	Alternation*PAN-defendant			-0.63	0.85
Controls					Controls				
Municipality	1.85***	0.26	1.80***	0.26	Electoral	1.90***	0.27	1.86***	0.27
State v Federal	1.10*	0.68	0.95	0.70					
Municipal v Federal	-1.32*	0.75	-1.27*	0.77					
Constant	-1.60***	0.31	-0.86*	0.58	Constant	-0.93***	0.31	-1.56**	0.66
	N=500 Pseudo R2 = .11		N=500 Pseudo R2 = .11			N=500 Pseudo R2 = .13		N=500 Pseudo R2 = .14	

* Significant at the 90% level; ** 95% Level; *** 99% level.

Furthermore, our results indicate that alternation of political power in office in 2000 brought no statistically discernible change in the Court's pro-PRI bias in constitutional controversies. Although the variable PRI-defendant*alternation is positive, this is not statistically significant. We can thus conclude that the Court has tended to side in favor of the former ruling party –particularly its governors—and that this tendency remains unchanged after this party lost the presidency in 2000. However, our results indicate *no partisan biases in the Court's rulings on constitutional actions*.

Thus, our results partly disconfirm Rios Figueroa (2007) in that the Court continues to favor the PRI even after power became fragmented post-2000. However, we provide evidence supporting his contention that fragmentation of political power brought Court activism. The difference between our approaches is that here Court activism is defined as the propensity to strike down laws rather than his measure of the Court's tendency to rule in favor of the PRI.

To conclude, our models show that the Court behaves very differently in constitutional actions vs. controversies in two fundamental ways: 1) after alternation of political power in office, there is a clear tendency to expand the Court's powers and engage in policy-making, which we measure as the propensity to strike down laws; and 2) there are no discernable partisan biases in the way the Court rules in cases where it can exercise abstract judicial review (constitutional actions). 3) The Court favors the PRI in constitutional controversies, which means that it tends to side with PRI governors over "opposition municipalities" and the federation.

To a large extent the change in the Court's behavior on constitutional actions, we claim, can be attributed to the *different types of conflicts* political politicians are bringing to the

Court, increasingly demanding its intervention in policy-making in a broader range of issues over which there are serious policy disagreements (e.g, economic policies, abortion, criminal law, economic regulation, lifetime sentencing, etc). These cases, we claim, are expected to cause more dissent among justices and to introduce new lines of cleavage within the Court.

Table 2. The Court’s Dissent in Constitutional Controversies and Constitutionality Actions

	Coef.	SE
Alternation (2000-2006)	1.21***	0.17
Constitutional Controversies	-0.93***	0.16
Controls		
Fundamental Rights	1.17**	0.57
Constant	-1.08***	0.16
	N=811	
	Pseudo R2 = .09	

* Significant at the 90% level; ** 95% Level; *** 99% level.

Table 2 supports our contention by presenting a model of dissent within the Supreme Court. The dependent variable is coded as 1 for cases where at least one justice voted against the majority decision, and 0 otherwise. We include the following independent variables; *alternation*, coded as before. *Constitutional controversies*, coded as 1 for controversies and 0 for actions. We also include the variable *fundamental rights & law enforcement*, which are constitutional actions that broadly speaking raise issues of individual rights and criminal justice. As expected, we obtain that there is significantly more dissent within the Court after alternation of political power in office; in constitutional actions; and in cases that raise issues about fundamental rights. The sections below focuses on these dissenting votes seeking to

uncover the emerging ideological cleavages within the Court.

5. Ideological Cleavages within the Court

Up until now we have discussed the Court's decisions as if it were a unitary actor, learning little about the policy content of the rulings and the policy issues that shape the formation of dissent within the Court. This last section of the paper departs from this dominant approach in the comparative literature in that it seeks to understand coalition making *within* the Court so as to unpack the underlying ideological cleavages dividing justices.

There are several reasons why we should find ideological differences among justices. First, even if the PRI selected most justices, it must have been difficult for this party to predict their future behavior by only looking at their previous careers; this could be more difficult for some appointees than others. Second, when the constitutional reform was approved, President Ernesto Zedillo was in the position to impose all the Court's justices because his party still controlled the 2/3rd super-majority in the Senate necessary to ratify nominations single-handedly. However, Zedillo opted to negotiate with the opposition, particularly PAN, the nomination of some of the justices (Sánchez, 2003). Third, the PRI is an ideologically heterogeneous coalition and it probably sought to represent some of its different "shades" with its appointments. Finally, four justices have been appointed after alternation of political power and their selection is the product of a broader political compromise. We first explore the nomination process for each of the justices and then we proceed to our empirical analysis regarding the underlying cleavages within the Court.

a) Nomination Processes

President Zedillo's reform disbanded the Supreme Court on December 31, 1994.

Nineteen days later the president sent a list with 18 candidates among whom the Senate would choose 11 to form the new Court. Three of the president's nominees were women and four of them were justices of the recently disbanded Supreme Court. While the opposition to reappoint the former justices was significant, President Zedillo was able to negotiate with the PAN the ratification of two of the former justices, Justice Azuela and Justice Díaz. One of other two repeating candidates did not obtain any votes and the other retired his candidacy prior to the election.

Table 3 shows the number of votes each candidate received. It also shows the political party that voted for each of the candidates and their length of tenure. The PRI and PAN agreed on 7 of the 11 justices. Castro and Aguinaco, both closely related to the PRI, were the product of a consensus because it was decided that they would be the first to leave the position (in 2003). The PRI and PAN agreed to ratify former Justice Díaz; but there was no consensus as to when he was to leave the position. The PRI decided unilaterally this would be in 2006.

Román, approved only with the PRI's support, would also leave the Court in 2006. Góngora received support from both the PRI and the PAN. Both parties agreed that he would retire in 2009. The PRI and the PAN agreed on Mariano Azuela, who used to be part of the dissolved Court as well as Justice Díaz. Díaz was appointed until 2006. Azuela's length of stay, however, was decided by the PRI alone –he was appointed until 2009. Three years later Ortiz and Aguirre would retire (2012). The former counted with the support of the PAN and the PRI; but the latter was single-handedly appointed by the PRI. Sánchez, Silva and Gudiño would last for more than twenty years, leaving the Court in the year 2015. Among these last candidates, the PAN only supported Gudiño (see table 3).

Table 3. Political Support for Zedillo’s Candidates to the Supreme Court⁷

<i>Justices</i>	<i>Parties</i>		<i>Ballots per Year of Retirement</i>					<i>Total</i>
			<i>2003</i>	<i>2006</i>	<i>2009</i>	<i>2012</i>	<i>2015</i>	
Juventino Castro	PRI	PAN	112					112
Genaro Góngora	PRI	PAN			112			112
Sergio Aguirre	PRI	PAN				112		112
José de Jesús Gudiño	PRI	PAN					112	112
José Aguinaco	PRI	PAN	111					111
Guillermo Ortiz	PRI					89		89
Juan Silva	PRI						89	89
Olga Sánchez	PRI						89	89
Humberto Román	PRI			89				89
Juan Díaz	PRI	PAN		89	23			112
Mariano Azuela	PRI	PAN		24	86			110

From these numbers alone we cannot identify the justices the PAN most strongly supported. However, what we can infer that justices elected only by the PRI were the ones this party thought would better represented its interests: Ortiz, Silva, Sánchez, and Román. It is important to notice that these were four justices, precisely the number needed to block any decision of the Court, the rule being 8 out of 11 votes. Note also that three of these four justices would occupy a seat in the Supreme Court over 17 years.

⁷ Even though the method of selection was through secret ballot, it is possible to infer -given the list of senators present during the voting; the total number of deposited ballots; and the number of senators from each party- the minimum party coalition necessary to approve each nomination. Underlying this assumption rests the extensive literature of cohesion and party discipline characteristics of the Mexican political parties (see Weldon, Jeff, “The Political Sources of *Presidencialismo* in Mexico,” ITAM 1997; and Casar, Ma. Amparo, “Building the Executive Dominance in Mexico: Party-Executive Relations”, *Cuadernos de Trabajo* No. 74, CIDE 1997).

Four new justices have joined the Mexican Supreme Court. Castro and Aguinaco were the first to leave the Court in 2003. Díaz and Román followed in 2006, thus giving President Fox the opportunity to fill in four seats before the end of his presidency. In November 2003, President Fox sent to the Senate a list with six candidates to replace Justices Aguinaco and Castro. Four of the six candidates were women, expressing the presidential preference to have at least a second woman join the Court. The candidates to replace Justice Aguinaco were José Ramón Cossío, María Teresa Martínez and Teresita Rendón. In November 27, 2003 Cossío was elected to replace Justice Aguinaco by a majority of 84 votes out of 92. Justice Cossío was able to gain the support of all the political forces (PRI, PAN and PRD) to appoint him until 2019. His election was a very smooth process, while the opposite was true for the election of Justice Castro's replacement.

The candidates to replace Justice Castro were Margarita Luna, José Luis De la Peza and Elvia Díaz de León. José Luis de la Peza was one of the four members of the Electoral Tribunal who voted to fine the PRI \$1 billion pesos (about USD\$90 million) for its involvement in the *Pemexgate*.⁸ Margarita Luna and Elvia Díaz de León, the other two candidates, had been federal judges. Luna had defeated Díaz de León eleven months earlier in the election for the *Council of the Federal Judiciary*.

The PRI supported Luna from the beginning while the PAN and PRD voted for De la Peza. With none of the candidates attaining 81 votes (the two-thirds majority required) the Senate agreed to have a second round of votes five days later. The second round, however, was not successful either. The PRI remained committed to Luna arguing that this

⁸ “Pemexgate” was a political scandal in Mexico that occurred during the presidency of Vicente Fox (2000-2006). In 2001, it was discovered that funds from the workers union of PEMEX, the national oil company, were misdirected to support the campaign of Francisco Labastida, the presidential candidate for the PRI in the year 2000. Nobody was convicted of any crime but the party was fined \$1 billion pesos.

party would only vote for a woman and that she was the best candidate. The PRD, which initially voted for De la Peza, changed its mind and joined the PRI in its support for Luna. After facing accusations of discriminating against women, the PAN also changed its mind and supported the other woman in the list, Díaz de León. All efforts were in vain since no party was able to reach the necessary majority. The Senate sent back the list to the president who then had to send a new list of candidates.

Interestingly, in the second list President Fox included again the only candidate vetoed by his own party, Margarita Luna. PAN's Senators strongly reacted against the president because he was giving the PRI the opportunity to keep fighting for their candidate. Furthermore, the *pamistas* felt that Fox was telling them for whom to vote, ignoring their own preferences. Luna was appointed in February 19, 2004 (almost three months after Justice Cossío), with a majority of 82 votes barely enough to reach the two-thirds' majority. She will leave the Supreme Court in 2019.

In June 16, 2004 Justice Román passed away leaving his seat empty almost two years before the end of his period (2006). President Fox then had the opportunity to appoint one more justice. Surprisingly, the three candidates included in the list sent by Fox were in one way or another previously linked to the PRI. The candidates were Felipe Borrego, Bernardo Sepúlveda, and Sergio Valls.

Felipe Borrego is the brother of Genaro Borrego, a PRI senator (who excused himself to vote in this election) and former president of the PRI. The press of the time regarded Borrego as included in the list per request of the PRI. Bernardo Sepúlveda, Foreign Minister under President De la Madrid (PRI) (1982-1988), was appointed in 2003 to sit before the International Court of Justice as Mexico's judge *ad hoc* in the Medellín's case

against the U.S. for violations to the Vienna Convention. For some, he was considered a strong candidate. However, Sergio Valls, a former PRI legislator and member of the *Council of the Federal Judiciary*, was able to achieve the required majority (85 votes) to replace Justice Román.

An issue related to Justice Valls' election was to determine the duration of his appointment. Justice Román died more than two years before his period ended, leaving the Senate with the decision to appoint Justice Valls only for the remaining of Román's term or for 15 years. Both positions were defended in the Senate but eventually the Justice Committee voted that the appointment would be for 15 years given the vacuum in the Constitution. Valls therefore will leave the Supreme Court also in 2019.

In November 2006 Justice Díaz retired and President Fox sent his last list of nominees to the Supreme Court. The three candidates this time were José Fernando Franco, Rafael Estrada Sámano, and María Herrera Tello. The latter was by far the closest candidate to President Fox included in any list. She was the first woman to preside a state Supreme Court (Nuevo León). Under President Fox she was Secretary of Agrarian Reform (2001-2003) until her appointment as Counsel for the Presidency in 2003. Later President Fox appointed her to the *Council of the Federal Judiciary*.

Despite all her credentials Herrera Tello was not appointed to the Supreme Court. The winning candidate, Franco Guzmán, was counsel to President Salinas (PRI), undersecretary of the Department of Justice under President Zedillo (PRI), and undersecretary of Labor under President Fox (PAN). Franco won by a striking majority of 94 votes. His appointment probably was negotiated weeks earlier since Herrera Tello renounced her nomination two weeks before the election. She accepted the nomination

again that same week after negotiations. Herrera Tello and Estrada Sámano only received together 5 votes (see table 4).

Table 4. Political Support for Replacing Candidates (2003, 2006)⁹

<i>Candidates to the Supreme Court</i>	<i>Coalition</i>	<i>Votes</i>	<i>Coalition</i>	<i>Votes</i>	<i>Elected</i>
Seat 1 (2003)	1st Round				
José Ramón Cossío	PRI PAN PRD	84			Yes
María Martínez		6			
Teresita Rendón		2			
Seat 2 (2003)	1st Round		2nd Round		
List (1)		82			No
Margarita Luna	PRI	37	PRI PRD	72	
José L. De la Peza	PAN PRD	42	PAN	6	
Elvia Díaz de León	PAN	12	PAN	43	
List (2)					Yes
Margarita Luna	PRI PAN PRD	82			
María Arroyo	PAN	15			
Gloria Tello		5			
Seat 3 (2004)	1st Round				
Sergio Valls	PRI PAN PRD	85			Yes
Bernardo Sepúlveda	PAN	20			
Felipe Borrego		9			
Seat 4 (2006)	1st Round				
José F. Franco	PRI PAN PRD	94			Yes
María H. Tello	PAN	3			
Rafael Estrada		2			

We highlight three issues from our analysis of these nomination processes: 1) Every single candidate that was ultimately appointed to the Court had the support of the PRI. 2) Of the original eleven justices, only four were chosen with the exclusive support of the PRI.

⁹ Source *Diario de Debates del Senado de la República* (Transcripts: November 27, 2003, December 2, 2003, February 19, 2004, October 2004, December 2006).

3) After alternation of political power in office, all justices appointed to the Court have been the product of consensus among the three major political parties, PAN, PRI and PRD.

Even if some justices appear to have closer affinities with certain political parties, we can't really tell how these would translate into the legal realm and shape justices' decisions. For example, are justices appointed only by the PRI more "authoritarian" and those appointed by consensus more "pro-democratic"? And if so, how does this line of cleavage manifest in specific legal reasoning? Is the Mexican Supreme Court also characterized by a liberal-conservative (left-right) division, as the US court is? To answer these fundamental questions, we need to analyze justices' votes.

b) Ideological Cleavages in the Court

Following a long tradition of spatial theory in political science, we infer justices' ideal policy positions. The assumption is that justices have ideal points and that they vote for the alternative that is closest to that point (Downs, 1957; Enelow and Hinich, 1984). To infer ideal points, we focus on justices' votes. Unanimous rulings, quite common in the Court, offer no information to infer ideology among justices, and therefore have to be dropped from analysis in this section. Only 161 votes between 1995 and 2007 were divided (i.e. at least one justice present in the panel voted contrary to the rest), a bit more than 15% of all. Breaking the data in time by Court presidency shows that there was some variance in the propensity of the Court to vote divided (Table 5). The first two periods (1995-1998, when Justice Aguinaco presided and 1999-2002, when Justice Góngora did) are close to the overall average, but the third (2003-2006, when Justice Azuela became president) and fourth (2007, the first year of Ortiz's presidency) were way above or below the average, respectively. The Court has also become much more active with time.

Table 5. Dissenting Votes by Presidency

<i>Presidency</i>	<i>Unanimity</i>	<i>Dissent</i>	<i>% Dissent</i>	<i>Total</i>
<i>Aguinaco (1995-1998)</i>	97	16	14	113
<i>Góngora (1999-2002)</i>	192	36	16	228
<i>Azuela (2003-2006)</i>	306	90	23	396
<i>Ortiz (2007-2010)</i>	276	19	7	295
<i>Total</i>	871	161	16	1,032

Model specification. Scaling techniques to infer ideology rely on a standard spatial model of voting (Hotelling 1929, Poole and Rosenthal 1997). The approach assumes that policy and ideology can be mapped in the same space, and that distance determines utility and voting. Justices in this context differ from one another in their locations in the policy space, each presumed to vote for the alternative closer to his or her ideal point. The aim of the analysis is to use justices' observed votes to estimate their ideal points and other parameters of interest. Hence, these techniques to infer ideal points assume that voting is sincere.

We specified one- and two-dimensional versions of the model (we only report two-dimensional results in this version of the paper). The key assumption of the spatial approach is that voting 'aye' ($y=1$) or 'nay' ($y=0$) on an issue depends on the relative locations of policy outcomes vis-à-vis justice j 's ideal point x_j in space. If $x^A, x^N \in \mathbf{R}$ (we later discuss the two-dimension version) denote the outcomes of the aye and the nay votes, respectively, it is their midpoint $m = (x^A + x^N) / 2$ that matters for analysis (we ignore item subscripts i for the time being). The justice will prefer the alternative falling on the same side m as his or her ideal point (for a review, see Rosenthal 1990). Formally, j 's vote propensity y_j^* is

$$y_j^* = x_j - m + \text{error}$$

where x_j is justice j 's ideal point and the voting rule is $y_j = 1$ if and only if $y_j^* \geq 0$, otherwise $y_j = 0$. The model becomes item-response-equivalent (see Gelman and Hill 2007) by multiplying the utility differential by a weight $d \in \mathbf{R}$, leaving the equation as

$$y_j^* = d(x_j - m) + \text{error}.^{10}$$

A larger d (in absolute value) indicates a more polarizing issue, an item discriminating the justices' ideology better. In the extreme, where $d=0$, the utility differential plays no role and voting is entirely determined by the random disturbance. A negative d reverses aye and nay votes, letting analysis proceed without requiring an a priori judgment about which vote falls to the left and which to the right of the policy space.

The two-dimensional extension is straightforward. Justice j 's ideal point $x_j \in \mathbf{R}^2$ now has two coordinates in space, $x_{j,1}$ and $x_{j,2}$. The same goes for policy. What now matters for voting is the line $x_2 = ax_1 + b$ bisecting space in two sides: all those with ideal points on one side voting aye, the rest nay. This bisector passes through midpoint m and is orthogonal to the line connecting x^A and x^N . Thus defined, all points on one side are closer to x^A than to x^N and therefore vote aye, the rest vote nay. The vote propensity in two dimensions becomes

$$y_j^* = d(ax_{j,1} + b - x_{j,2}) + \text{error}$$

where $x_{j,1}$ and $x_{j,2}$ are the coordinates of j 's ideal point, a and b are issue parameters that we need to estimate along ideal points.

Small committees, like Courts, raise complications for model estimation (Londregan 2000). With $J=11$ justices and a maximum of $I=90$ items (all votes in the 2003-2006 period),

¹⁰ Item-response models are designed to infer a latent trait (eg. intellectual ability or ideology) from allegedly related subjects' traits (such as answers to items in the GRE test or roll call votes). $d = -2(x^A - x^N)$ when relying on quadratic utility functions. Estimation does not recover the coordinates of the aye and nay policy alternatives, only their midpoint. As the distance between them increases, their choice becomes likelier to arouse passions between justices, which is precisely what d is intended to capture.

$J \times I = 990$ data points are used to estimate $2 \times I + J = 191$ parameters. With about 5 observations per parameter, likelihood-based estimation becomes problematic. Bayesian estimation can overcome such problems, and be implemented through MCMC techniques (Martin and Quinn 2002; Clinton, Jackman and Rivers 2004).¹¹

The Bayesian approach requires prior probabilities for all parameters to be estimated: x_i , m_i and d_i ($i=1 \dots I$ and $j=1 \dots J$) in the one-dimensional version; x_i , a_i , b_i and d_i in two dimensions. We adopted non-informative priors – i.e. a zero-mean normal distribution with variance one – for all parameters except four justices' ideal points. These were instead given semi-informative priors so as to solve the scale and rotational invariance problems (i.e. give the arbitrary scale on which estimates are mapped a unit and a sense of what “right”, “left”, “up”, and “down” actually mean). In the one-dimensional version, Justice Góngora, with a reputation for judicial activism, was placed as a left extremist and Justice Gudiño, with a reputation for legalism, at the right end; both were present in the four periods we analyze separately. In the two-dimensional version, Góngora and Gudiño were located in the South and North, respectively, anchoring a vertical dimension; Justices Silva and Aguirre were situated in the West and East extremes, respectively, anchoring the horizontal dimension. The choice of these extremists was an inductive exercise: not only are they also present in all four periods, they also always outflanked other justices chosen as possible extremists in preliminary runs of the model. While we are quite certain that the four anchors chosen are extremists for the two dimensions, we need to infer from analyses of cases or our own understanding of the Court what the substantive meaning of ‘vertical’ and ‘horizontal’ actually mean in policy terms. A future iteration of the model will anchor the policy space

¹¹ We estimated the models with WinBUGS software (www.mrc-bsu.cam.ac.uk/bugs) running it from R (www.r-project.org).

using priors about the d_i parameter for a handful of items for which the West/East and North/South implications of voting aye or nay are pretty transparent (cf. Estévez, Rosas, and Magar 2008). This procedure will confirm if the meaning we impute to the two dimensions in the current paper is accurate.

Formalizing the anchor we use here, the semi-informative priors are the following:

Justice	1-dimension priors	2-dimension priors
Góngora	$x_j \sim N(-2, .25)$	$x_j \sim N([0, -2], [.25, .25])$
Gudiño	$x_j \sim N(2, .25)$	$x_j \sim N([0, 2], [.25, .25])$
Silva	$x_j \sim N(0, 1)$	$x_j \sim N([-2, 0], [.25, .25])$
Aguirre	$x_j \sim N(0, 1)$	$x_j \sim N([2, 0], [.25, .25])$

Non-informative priors were assigned to all other parameters (ie. $x_j \sim N(0, 1)$ in one dimension, $x_j \sim N([0, 0], [1, 1])$ in two; $d_i \sim N(0, 4)$; and $m_i \sim N(0, 4)$ in one dimension, $a_i \sim \text{unif}(-\infty, \infty)$ and $b_i \sim N(0, 4)$ in two).

Results. Estimation proceeded by updating the model thousands of times, then taking a sample of posterior parameter simulations for analysis.¹² Two-dimension ideal point parameter estimates for all votes in the four periods appear in Figures 1 to 4. The figures show the estimated voting scores (solid points) for all the justices who have served on the Mexican Supreme Court from 1995 to 2007 by Chief Justice along with a 95% margin of error for each voting score (horizontal bars).

We find two primary cleavages that explain the Supreme Court’s voting, a vertical line of *activism-legalism* and a horizontal *right-left* division. Judicial activism, as used here, tries

¹² Three chains were updated one hundred thousand times each. The first fifty thousand burn-in scans for each chain were dropped, retaining every fiftieth simulation of the remainder. This produced a sample of $3 \times 1000 = 3000$ posterior simulations. Gelman and Hill’s R hat approximate 1, suggesting that the chains had converged towards a steady state.

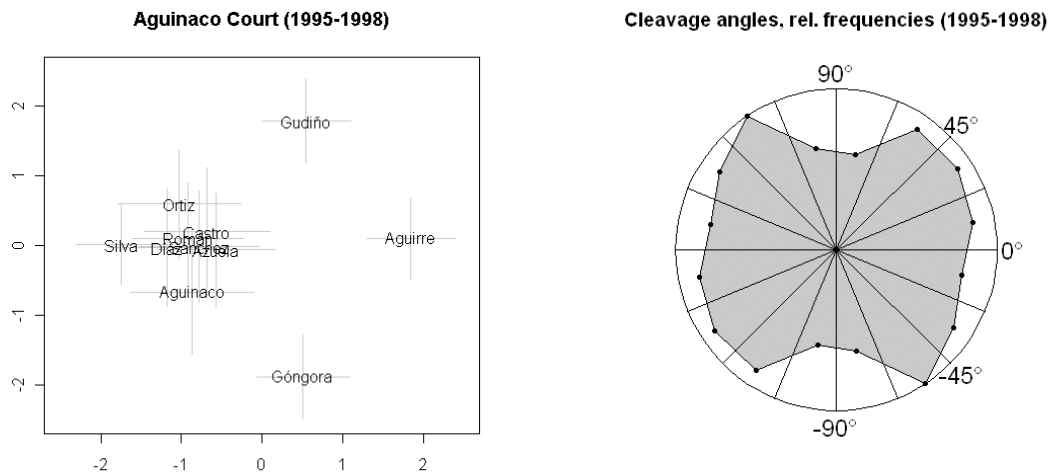
to expand the Supreme Court's jurisdiction in three ways (i) overturning judicial precedent that limits the extent of the judicial power; (ii) expanding the Court's jurisdiction often engaging in a non-literal interpretation of the constitution and the law; and (iii) ruling against a limited interpretation of standing. Legalism, on the other hand, calls for “judicial restraint” and for a limited interpretation of both the Court's jurisdiction and the rules for standing. Legalism is also related to a literalism in the interpretation of the law (see Bailey and Maltzman 2008).

The left-right division relates to classic differences with respect to the role of the state in the economy that get conventionally translated into the party system. As in the realm of partisan politics, we expect to find a strong correlation between left-right and liberalism-conservatism as related to social issues such as abortion and minority rights. Thus, a left position, as used here, can be narrowly defined as one or more of two possible things: (i) support for state intervention in the economy as well as a narrow interpretation of Articles 25, 26 and 27 of the Constitution i.e., in favor of the State's monopoly (*economic left*) and (ii) progressive positioning on social issues (*moral left*). A right position, on the other hand, means a more liberal interpretation of the Constitution, allowing for a more flexible interpretation of Articles 25, 26 and 27, and a more conservative approach to the analysis of social and individual rights. The left-right cleavage should be particularly present after alternation of political power in office in 2000, which as we have seen, brought different types of disputes to the Supreme Court (Sánchez, 2008).

The first period, when Justice Aguinaco presided the Court between 1995 and 1998, was characterized by a solid bloc of 8 justices, as portrayed in Figure 3. The most straightforward interpretation of proximity in spatial models is voting likeness. So with the exception of Justices Gudiño, Góngora and Aguirre, the rest voted likewise most of the

time. Yet two dimensions are remarkably evident in the period, and it is minority votes that define them. The three aforementioned justices most often disagreed with the majority bloc, but did not systematically vote together either (else they would occupy adjacent positions in space).

Figure 3



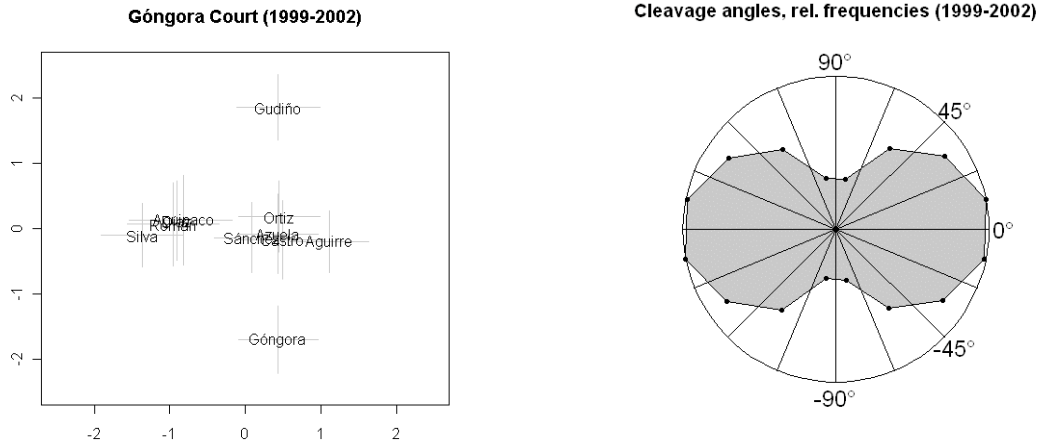
The model estimates informative parameters in this respect. By the assumptions of the spatial model, each vote cleaves the space into two camps separated by a line. The slope (a_i) and constant (b_i) of this line are estimated along ideal point coordinates. The right side of Figure 1 gives an idea of the angles that the estimated lines took in the period, as determined by the posterior distribution of slopes.¹³ The plot breaks a circle into eight slope groups appearing as pie slices, and reports the relative frequency with which posterior slopes fell in each. Frequencies appear as a point inside each slice, and are read like a histogram: the edge of the circle corresponds to the maximum frequency, so all other points shrink radially in

¹³ By the sine law, the slope can be deduced from the angle according to the following relation $a_i = \sin(\text{angle}) / \sqrt{1 - \sin(\text{angle})^2}$.

proportion to the relative frequency of cleavages with that specific angle. The Aguinaco Court saw cleavages in all angles except the most vertical ones with more or less similar frequency. By implication, it was least likely to have Justices Gudiño and Góngora voting together (this required cleavage lines near 90° or -90° – nearly half as likely as any other cleavage angle – to put them on the same side). More likely were cases where Gudiño and Aguirre voted against the rest (cleavages sloping at about -45°) or Góngora and Aguirre against the rest (at about 45°).

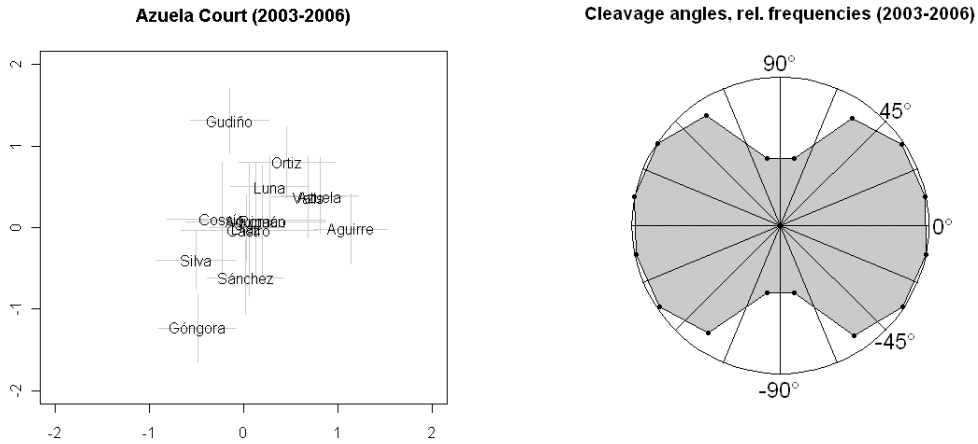
The second period, presided by Chief Justice Góngora between 1999 and 2002, saw the compact bloc break into two more or less distinct groups. Justices Azuela, Castro, Ortiz, and Sánchez slid rightward towards Aguirre in Figure 4, leaving Aguinaco, Román, and Díaz in the left with Silva. This shift more clearly defined the left-right dimension in the Court. Cleavage lines took mostly horizontal angles (less than 45° in absolute value), implying that one side of the left-right divide voted with Góngora (or Gudiño, reversing the mild slope) against the other side and Gudiño (or Góngora). Again, Justices Gudiño and Góngora rarely voted the same way, as seen by the infrequency of vertical cleavage lines: the activist-legalist dimension was still basically defined by these two justices' opposition to each other, as in the previous period, with the rest of the Court in the middle. To a large extent, the Góngora Court can be defined by this justice pulling the Court toward significantly more activism, with justice Gudiño clearly resisting the expansion of the Court's powers.

Figure 4



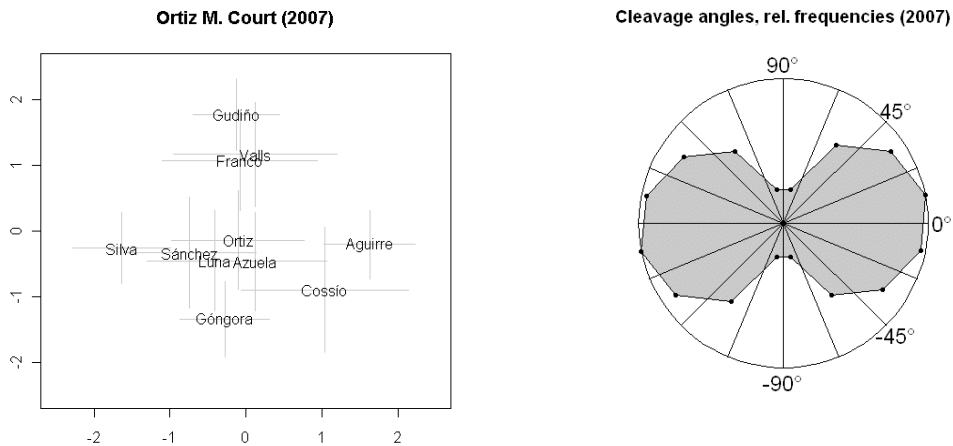
The third period, when Azuela was Chief Justice between 2003 and 2006 coincided with three new appointments to the Court: Justices Aguinaco, Castro, and Román were replaced by Justices Cossío, Luna, and Valls. The space also looks much less two-dimensional than before, with a more fluid distribution of ideal points. An approximately 45° line in the left side of Figure 5 would seem to capture much of the variance in justices' policy positions, excepting Gudiño and Aguirre. Positions in the horizontal and vertical dimensions in the Azuela court became highly collinear, Góngora and Ortiz representing the extremes of the conjoint spectrum –e.g., Góngora the left-wing/activist justice and Ortiz the right-wing/legalist one. Justices Gudiño and Aguirre, however, departed from this line in opposite directions. And there was, as in the first period, a relatively uniform distribution of cleavage angles (with the exception of the most vertical categories, much less frequent than the rest).

Figure 5



The final period reports the start of Ortiz's Court presidency in 2007. The space, as is evident in Figure 6, became again clearly two-dimensional, as in the first two periods, but with justices spread more evenly across space as in the third. Silva and Aguirre are opposite to each other on the left-right dimension, although both stand next to each other on the activist-legalist dimension. Two significant blocs can be distinguished looking at the 45 degree angle –Gudiño, Valls, Franco, and Aguirre on the right-legalist side, and Góngora, Sánchez, Silva and Luna on the left-activist one. Justice Cossío moves close to Aguirre in this last Court, although he often votes with the Góngora bloc. Ortiz is close to the median in both dimensions.

Figure 6



Activists and Legalists: Some Illustrative Examples

The famous case of *Temixco* (1999) is a good illustration of the activism-legalism cleavage and why Justice Góngora is consistently the most activist in the Mexican Supreme Court. The Court was deciding a suit filed by the Temixco municipal government challenging the procedures adopted by the legislature of the state of Morelos to solve a boundaries conflict between the Temixco and Cuernavaca's municipalities.

Unlike *Tabasco*, in this *constitutional controversy*, not only did the Court accept the competence of Morelos' Legislature but it also declared the Court's power to examine the procedures followed by the Legislature while solving the boundaries dispute. Here, arguing this time with the majority, Justice Góngora stated that "...*constitutional controversies* had been established as means to protect the spheres of competence of the different powers which

final goal is to achieve people's welfare, and, thus, it would be against the aforesaid goal, and against the strengthening of federalism, to deny the power to control those violations on the basis of technical interpretations..." This new definition of the scope of *constitutional controversies* resulted in the expansion of the Court's power to exercise judicial review over due process violations (substantive and procedural), which meant that an impressive variety of cases could now be subject of review by the Court.

Justice Góngora's success in reaching a majority in *Temixco*, however, was the result of a series of precedents redefining the scope of *constitutional controversies*.¹⁴ Originally, *constitutional controversies* were limited to solve encroachments between different branches and levels of government;¹⁵ yet the Court subsequently expanded the scope of *constitutional controversies* to include also direct violations to the constitution.¹⁶ Later on, the Court changed the scope of review again to include the review of indirect violations to the constitution –i.e., violations to local constitutions “fundamentally related” to the federal constitution.¹⁷ Finally, the scope of *constitutional controversies* was expanded to encompass any violation to the constitution, fundamentally related or not, based on the principle of constitutional supremacy (*Temixco*, 1999).

Justices Gudiño and Ortiz were the dissenting minority in *Temixco* but they had different reasons. Justice Gudiño disagreed with the majority because he didn't “share the

¹⁴ For a more detail discussion of the evolution of the Supreme Court's criteria see Justice Cossío's dissenting vote in the *constitutional controversy* 18/2003.

¹⁵ “Controversia constitucional. La tutela jurídica de esta acción es la protección del ámbito de atribuciones que la ley suprema prevé para los órganos originarios del estado.” Mexican Supreme Court. *Novena Época*. 1998. *Semanario Judicial de la Federación*.

¹⁶ “Controversias constitucionales entre un estado y uno de sus municipios. A la Suprema Corte sólo compete conocer de las que se planteen con motivo de violaciones a disposiciones constitucionales del orden federal.” Mexican Supreme Court. *Novena Época*. 2000. *Semanario Judicial de la Federación*

¹⁷ “Controversia constitucional. Es procedente el concepto de invalidez por violaciones indirectas a la constitución siempre que estén vinculados de modo fundamental con el acto o ley reclamados.” Mexican Supreme Court. *Novena Época*. 1997. *Semanario Judicial de la Federación*.

majority's view of what means to interpret the Constitution and what are the limits of such power.” In his view, “the ruling approved by the majority assumes that the interpretation of the Constitution has no limits, or if that they exist they can simply be ignored.”¹⁸ Justice Ortiz simply didn't agree with the case's procedure.

Two other recent examples of the debate between activists and legalists are *Nuevo León* (2006) and *Durango* (2006). *Nuevo León* (2006) is an important case because the Court had to define who has standing in *constitutional controversies*. The argument used by the legalists in this case to define who has standing inevitably resembles the Court's interpretation prior to *Amparo Mexicali* (1991). As mentioned before, until 1991 the Supreme Court denied relief to virtually all municipalities in the country. The way to do this was by strictly interpreting who was a “power” under Article 105 of the Constitution.¹⁹ From 1917 to 1991, the Supreme Court interpreted that the municipalities were not a “power” therefore they lacked standing to sue in *constitutional controversies*. A question remained as to whether if municipalities were not a “power” what were they? The Court did not answer this question nor recognized any alternative means of relief for municipal governments. As a result, the Court dismissed all *constitutional controversies* filed by municipalities during these years.

In 2006, Nuevo León's Supreme Court brought a *constitutional controversy* against the state's administrative court. The issue was to determine if the administrative court had jurisdiction to reverse a decision made by the state's Council of the Judiciary. The Supreme Court, however, had to determine first if the administrative court had standing to be a party in *constitutional controversies*.

¹⁸ Justice Gudiño's dissenting vote in *Temixco* (1999).

¹⁹ Remember that Article 105 is the provision that regulates the Supreme Court's power to solve *constitutional controversies* and *constitutionality actions*.

A majority of the justices, headed by Justice Valls, interpreted that the administrative court was not a “power” and consequently lacked standing to be a party in *constitutional controversies*. According to the majority (Gudiño, Franco, Ortiz, Aguirre, Azuela, Luna and Valls), the only possible defendant in the *controversy* was the governor of the state. The majority argued that unless the case was declared a conflict between the governor and the state’s judiciary, the Supreme Court should dismiss the case because the administrative court is not a “power.”

The dissenting minority (Justice Cossío and Justice Góngora), on the other hand, argued that the administrative court had standing. As they explained it, administrative courts are courts that specialize in administrative issues, particularly disputes concerning the exercise of public power. Their role is to ascertain that official acts are consistent with the law. Because of their nature, administrative courts are considered separate from the judiciary but also from the other branches of government. For the minority, if the Court were to recognize that the governor had standing as defendant, it would be denying to administrative courts and any other autonomous administrative entity for that matter (such as the *Federal Electoral Institute*) their independence from the executive power. More importantly, the Supreme Court would be *de facto* depriving them of all constitutional protection. Administrative entities cannot have standing in *amparo*, therefore, *constitutional controversies* were their only possible mean to access constitutional justice.

The pivotal voters in *Nuevo León* were Justices Sánchez and Silva. Justice Silva ended up joining the majority and believed that the administrative court lacked standing. Justice Sánchez, however, issued a more pragmatic vote. Before joining the majority she explained

that she was voting because she rather had the governor as defendant in the *constitutional controversy* than the case dismissed.²⁰

Other important example is *Durango* (2006). Here the Supreme Court had to define the scope of *constitutionality actions*. Originally, *constitutionality actions* were limited to solve conflicts between a law and the federal constitution. Subsequently, the Supreme Court redefined the scope of *constitutionality actions* to include violations to states' constitutions as long as they were "fundamentally related" to the federal constitution. *Durango* (2006) raised a different question for the Court. In this case, the leadership of the PAN brought a *constitutionality action* against the local electoral reform arguing that it had violated the state's constitution. The Court then had to define if it had jurisdiction to rule a *constitutionality action* on independent state law grounds.

In the United States, the Supreme Court will not exercise jurisdiction if a state court judgment is based on "adequate and independent" state grounds. State law grounds are "adequate" if they are fully dispositive of the case. They are "independent" if the decision is not based on federal case interpretation of identical federal provisions. Such distinction between the Supreme Court's and the state courts' jurisdiction makes sense in a federal system with decentralized judicial review. However, the distinction is not so clear in a federal system with centralized judicial review.

The legalist majority in *Durango* voted against exercising the Court's jurisdiction on independent state law grounds. For them the Supreme Court should only decide questions that affect the federal constitution. The dissenting minority, headed by Justice Góngora, however, argued that if the Supreme Court didn't exercise a sort of "surrogate" judicial

²⁰ Transcript of the session of August 21, 2007.

review, the alternative was to leave the states' constitutions without enforcing. The reason for this is that the states don't have a constitutional tribunal to enforce the local constitution. Hence, if the Supreme Court didn't step in to enforce the local constitutions no one would.

The Left-Right Division and Electricity

We discuss the electricity case to illustrate the left-right ideological cleavage in the Mexican Court. In 1992 President Salinas amended the Electricity Law to allow private investment in the generation of electric power to address (i) the growing demand for electrical power and (ii) the chronic insufficiency of public resources to make the necessary investments to satisfy the increasing demand. The amendment provided that the power generated by co-generation, self-supply, independent power producers, small power production, as well as some exports and imports by permit holders, would not be not subject to the prohibition on private participation found on Article 27 of the Mexican constitution.²¹ The new Electricity Law also stated that it would be the executive power, through regulations, who would establish the allowable quantities of power such private producers could sell to the *Federal Commission of Electricity* (CFE).

A year after the Electricity Law was amended President Salinas (PRI) issued the first electricity regulation. Until today, the regulation has been amended three times. First, in May 1994, when President Salinas used his rulemaking power to establish the limits to the surplus power that private producers could sell to the CFE. Second, in July 1997, when President Zedillo (PRI) amended the regulation to grant private investors greater flexibility

²¹ Article 27 of the Constitution establishes: "... Only the Nation has the right to generate, conduct, transform, distribute, and supply electrical energy for use in public service. No concessions for these purposes will be granted to private persons, and the Nation will make use of the property and national resources which are required to achieve these goals..."

to participate in the bidding processes for capacity and associated energy. Finally, in May 2001, when President Fox (PAN) attempted to establish new limits to the surplus's private producers could sell to the CFE. Not surprisingly, although the three reforms were an equal exercise of the presidential regulatory power, none of the reforms passed during the years of *presidencialismo* was challenged. Only after the election of 2000, did conflicts about the use of the presidential rulemaking power start.

Following his antecessors' success to promote private investment in the electricity sector, President Fox (PAN) intended to permit a higher percentage of privately generated electricity to be sold to the CFE.²²

Led by the opposing parties (PRI-PRD) in both Chambers, Congress brought, in July 2001, a *constitutional controversy* against President Fox's reform (*Electricity*, 2001). This *constitutional controversy* was the first case in which the Supreme Court had to pass judgment on a conflict between the executive and both chambers of Congress. Congress challenged the regulation's legality on the grounds that the president violated the Electricity Law since with the reform "the president explicitly tries to elude the limitations of the statute by allowing private actors to generate and sell in any amount their electrical power excess to the Federal Electricity Commission."

President Fox argued that the Electricity Law does not establish any limit to the amounts of excess energy that private investors may sell to the CFE. Rather, it explicitly provides that it is the president, through regulations, who can determine the limits of such

²² The reform mainly consisted of three modifications. First, an increase up to 20 MW for self-supply permit holders with an installed capacity of 40 MW; up to the fifty percentage of their capacity to self-supply permit holders with an installed capacity over 40 MW; and up to one hundred percent of the co-generators excess capacity. Second, the reform authorized the Minister of Energy to modify the power percentage to buy from private co-generators and self-suppliers. Finally, the new rule granted authorization to the CFE to buy permits holders' excess power without going through a competitive tender.

amounts. Nevertheless, Congress claimed that the increase on the regulation's limits to buy excess power was an encroachment of its legislative power.

The logic of the Congress' claim was that, although the Electricity Law did not establish any explicit limit to the amounts that co-generators and self-supply permit holders can sell to the CFE, the Law always intended to provide for the selling of excess energy by private investors as an "exception" to the State's exclusive right to provide electricity and not as an indirect way to open the electric sector to private investment.

The president's argument was that if the regulation did not fell outside the scope of the legislation and, as stated by the Supreme Court, the only limits to his rulemaking power were the principles of "*reserva de ley*" and *hierarchical subordination*, then, updating the amounts already set in the regulation was not a violation to the legislative power of Congress.

When ruling on *Electricity* (2001) the Supreme Court had to determine the validity of the regulation vis-à-vis the legislative intent –i.e., contrast the regulation to the Electricity Law. However, a second interpretation was promoted by Justices Góngora, Azuela, Ortiz and Díaz who considered that the Court should declare the unconstitutionality of the regulation, not because it violated the legislative intent, but because it violated Articles 25, 27 and 28 of the Constitution which explicitly prohibit *any* private participation in the energy sector.

When contrasting the regulation to the Electricity Law, 4 of the 11 justices voted in favor of the presidential regulation: Aguirre, Gudiño, Aguinaco, and Sánchez. As Justice Aguirre explained, the increasing participation of private investment on the electricity sector was not something new, it was a process that started since 1992 and was supported by other legislative acts such as the Regulatory Energy Commission Law and NAFTA. According to

this minority, the explicit reference in the Electricity Law to the executive's power to set the limits to the amounts that CFE could buy from private generators clearly reflected the legislative intent when adopting the law. If the current legislature had a different intention, then, it was within its control to “undelegate” the executive's power by amending the Electricity Law. The remaining seven justices, led by the justice in charge of writing the opinion, Justice Silva, considered that “if we were to uphold the constitutionality of the regulation it will allow, in practice, the privatization of a strategic sector of the country”²³ (with Justices Silva, Castro and Roman voting on statutory grounds and Justices Góngora, Azuela, Ortiz and Díaz on constitutional grounds).

As explained before, the Court's decisions on separation-of-powers *controversies* can only have general effects when voted by a majority of eight votes. In order to reach the required majority, two days after the initial voting, Justice Sánchez changed her vote from voting in favor of the president on statutory grounds to vote against him when comparing the regulation against the literal interpretation of the constitution.

While Congress' claim in the electricity controversy was a violation to the principle of hierarchical subordination, Justices Góngora, Azuela, Ortiz and Díaz considered that the “effective claim” asked by Congress was to compare the presidential regulation against Articles 25, 27 and 28 of the constitution. The legal technicality to do this was by “curing the deficiency of the claim” (*suplencia de la deficiencia de la queja*).

In the *amparo* procedure the “deficiency of the claim” is a well-developed concept. Mainly, it means that if a judge realizes that the plaintiff's claim is “incomplete” or “imperfect,” she may “cure” the claim as a way to ensure that equity and justice prevails in a

²³ Transcript from the session of April 25, 2002.

trial procedure. The most common *amparo* areas where this concept is applied are Labor Law, where it only operates in favor of the workers, and Agrarian Law, where it also operates in favor of less privileged party –i.e., the peasants. Interestingly, in the *Electricity* controversy the Supreme Court applied this principle in favor of Congress, arguably considering it the “less privileged party.”

When the majority of the Court found that President Fox’s regulation violated the State’s exclusive right to provide electricity, it not only ruled the regulation as unconstitutional, most significantly, it also questioned the validity of the Electricity Law passed by Congress (legal basis for all the contracts signed with the private sector during the last 16 years).

The electricity case highlights the bidimensionality of the policy space within the Mexican Court. Those who voted against the electricity law not voted in favor of expanding the role of the state vs. the private sector in the generation of electricity. These justices also favored an expansion of the Courts’ policy-making power over the other branches of government. To expand the Court’s powers they engaged in a non-literal interpretation of legal standing by “curing the deficiency of the claim” that led them to review the constitutionality of a law that had not been challenged. Justice Góngora, consistently situated in our maps in the lower/left quadrant most clearly embodies this vision of a more activists/leftist Court. Justice Gudiño consistently differs with this vision on the grounds of legalism and Justice Aguirre on the grounds of ideology. Hence, both of them voted against the electricity decision.

6. Final Remarks

This paper looked for answers to some fundamental questions about the behavior of Mexico's Supreme Court since it was turned into a full-fledged actor in the system of separation of powers. Regression analysis of all Supreme Court rulings between January 1995 and August 2007 revealed that the court began with a more or less clear pro-PRI bias in its constitutional controversies rulings. This conforms well with a view that the court was established to protect the interests of the former power holders.

However, the court began acting in more complex ways afterwards. Separate analysis of constitutional actions (cases where legislative minorities, the executive, and political parties have standing to appeal for judicial review of legislation) and constitutional controversies (cases where one branch or level of government has standing to appeal the acts of another branch or level of government) show important differences between the two. It is clear that the Court continues to favor the PRI –its governors—in constitutional controversies, yet we find *no systematic partisan biases* in the Court's rulings on constitutional actions and this holds for the entire period. We do find a significant change in the Court's behavior after 2000 but, in contrast to some of the ex-ant literature, we demonstrate that this change has little to do with the Court's relationship with the PRI. The Court's change of behavior happens after 2000 and is related to its higher propensity to strike down laws. This last result is in line with much of the existing literature that suggests that Court activism results when power becomes fragmented.

To derive predictions about courts' activism, most of these theories²⁴ rely on

²⁴ Among others, Spiller and Gely, 1990; Ferejohn, 1999 and 2002; Bednar, Eskridge, and Ferejohn, 2001; Ferejohn and Weingast, 1992; Epstein and Knight, 1998; and

assumptions about the policy positions of the major political players –the president, Congress and the Court – and on whether there is divided or unified government. These models predict that under conditions of divided government, the Court will have a large room of maneuver *provided that its policy position is somewhere in between these two players*. However, the predictions of these models would not hold even under divided government if the Court were positioned on the right (left) next to the president or on the left (right), next to Congress. In this later case, the Court's decisions would tend to side with either of these players.

Thus, to know the extent to which divided government (or alternation of political power in office) is likely to lead to Court activism, one needs to somehow infer the Court's policy positions, which is far from obvious in many cases for which there is little cumulated knowledge about the internal politics of Courts. A crucial question we wanted to answer in this paper is the extent to which existing partisan cleavages in Mexico translate into the Supreme Court by shaping justices preferences in meaningful ways. Through the analysis of roll call votes we produced estimates of justices' ideal points. Our results reveal important information about the Court's policy space and some potential explanation as to why there is increase Court activism in constitutional actions and not in controversies.

We discover two main cleavages dividing the Court –activism vs. legalist and left vs. right. While the first period was characterized by a compact "centrist-legalist" group of 8 out of 11 justices voting together, time and the changing issues brought before the court forced them to spread more evenly in two general directions. Most of the time the two dimensions

Graber, 1998.

are not highly collinear.

Most constitutional controversies involve issues of legality and the application of the laws in a case-by-case basis. In these controversies, we claim, the main line of division normally relates to activism-legalism, although in important controversies justices also divide along the left-right dimension of conflict. The "legalist bloc" favors a strict interpretation of the law and consequently the status quo. Furthermore, in the realm of federalism, which is most relevant in constitutional controversies, as was the case in the classic Vallarta-Iglesias debates of the late XIX century, this line of division relates to the extent to which the federation can intervene in the states. The "legalist bloc" supports a strict interpretation of the constitution leading to respect for the states' constitutional autonomy. By contrast, the "activist" bloc supports the application of the federal constitution to solve disputes over constitutionality within the states. Thus, the predominance of a "legalist bloc" within the Court would tend to generate constitutional controversies rulings that favor the status quo and the states over the federation. For most of the period under study, the PRI had the strongest presence in the states and hence Court's pro-PRI bias in constitutional controversies.

Constitutional actions are a more complex matter. Here the Court is being asked to rule on a broader range of issues such as economic regulation or abortion. Over these set of issues there is a strong polarization among the existing political parties and among Congress and the Presidency. The court's activism in constitutional actions after 2000, we believe, stems from three related sources: 1) the fact that the presidency shifted to the right of the Court, first with the election of Vicente Fox and later of Felipe Calderon. Prior to 2000, we believe that there was a stronger match between president's Zedillo's ideal policy positions and those of the Court –after all, he was able to appoint all justices. 2) A significant shift by

Congress to the left. Although this shift began after the 1997 mid-term elections, which brought to power a large PRD bloc, this party was not able to shape the policy agenda until after 2000, when it began to pass legislation in coalition with the PRI.²⁵ 3) The Court's positioning in between these two players as well as the emerging polarization within the Court between the leftist and rightist blocs. These three conditions, as well as fragmentation of political power within the states' powers, have opened to the Court a big room for maneuver, leading it to increasingly engage in policy making.²⁶ Our empirical results support these hypotheses both by showing that the Court begins to strike down laws more often in 2000, and by demonstrating the saliency of the left-right policy space within the Court.

Court activism will not always lead to the choice of desirable policies as the electricity decision cited above suggests. This is particularly problematic, we have suggested, because the transition to democracy in Mexico did not entail a new social consensus of some appropriate limits of state power. The Court is in charge of interpreting the laws in light of a constitution that was drafted during the autocratic period; as such it gives strong powers to the state over the citizens.²⁷ Although we are convinced that having a strong Court and a system of checks and balances is significantly better than the pre-existing equilibrium, we still believe that a form of "constitutional revolution" would be necessary to make citizens' rights the focal point of the system. We leave for further research the sources of these constitutional revolutions.²⁸

²⁵ In the period 1997-2000, most congressional coalitions were between the PAN and the PRI.

²⁶ A simple spatial model that places the Presidency to the right, the Congress to the left, and the Court in between would support this conclusion.

²⁷ Compared to other democratic constitutions, the Mexican constitution has a very inadequate section on fundamental rights. The Spanish constitution is a good contrast.

²⁸ Again, the Spanish constitution is a great example. The transition to democracy there entailed a strong social consensus about the importance of citizens' rights and this is reflected both in the constitution as well as in justices' change of mentality about the importance of these rights.

7. References (apologies this section is very incomplete)

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