Comparative Politics
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Contents

Rituais of Respect: Sufis and Secularists in Senegal in Comparative Perspective
Alfred Stepan
379

Following the Party’s Lead: Party Cues, Policy Opinion, and the Power of Partisanship in Three Multiparty Systems
Ted Brader and Joshua A. Tucker
403

Party Discipline, Electoral Competition, and Banking Reforms in Democratic Mexico
Gabriel Aguilera
421

Crafting Courts in New Democracies: Ideology and Judicial Council Reforms in Three Mexican States
Matthew C. Ingram
439

Measuring Individual Identity: Experimental Evidence
Alexander Kuo and Yotam Margalit
459

Review Article

The Comparative Politics of Immigration
Martin A. Schain
481

Abstracts
499

Index to Volume 44
501
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Judicial strength and the rule of law are increasingly understood as vital to democratic development. Understanding the sources of strong courts, therefore, is critical, and a growing literature examines the political origins of effective judiciaries. A dominant theoretical strand in this research anticipates that judicial reform is a product of rising electoral competition. That is, electoral uncertainty generates the motivations—conceptualized as material, rational-strategic incentives—required to build stronger judicial institutions.

Accounts based on electoral uncertainty, however, raise unresolved puzzles of causation and prediction. Despite a broad consensus regarding the benefits of competitive politics, rival causal logics underpin the effects of competition. Moreover, the incentives generated by electoral uncertainty apply to all politicians equally, thus anticipating that better institutions depend less on the ideas or identity of any given politician and arise automatically, as a quasi-mechanical side effect of competition. Further, dysfunctional institutions persist even in competitive settings; reforms frequently occur long after the start of electoral openings; and the specific content of reforms varies across similarly competitive settings, showing electoral accounts to be overly optimistic, or at least ambiguous, about their predictions regarding both the timing and content of reforms. Introducing additional complications, a core insight of a strategic bargaining account of reform anticipates that competition in previously noncompetitive settings, for example Mexico, increases the number of relevant actors, hindering policy change and inhibiting reform. That is, competition might produce less reform, not more. Indeed, a motivated actor in a noncompetitive setting may have the easiest task of effectuating reform, a task that becomes more difficult as competition increases and power fragments. Electoral accounts do not anticipate this negative effect, and tell us nothing of the underlying motivations of such actors. In sum, current theories of judicial change are inconsistent and inconclusive, suffering from problems of both behavioral equivalence and indeterminacy. Rival hypotheses are in play, obfuscating causation and making predictions unclear, unstable, and even contradictory.
To resolve these puzzles, this article highlights the role of ideas and agency. Ideas—nonmaterial, principled commitments about the proper role of courts in society—clarify why some actors may promote reform despite the absence of competition, and the absence of these ideas illuminates why others have been unwilling to reform despite the incentives of competition. Ideas also clarify why actors promote reform despite material costs, obstacles, and constraints, even expending great effort over long periods of time to overcome those obstacles. That is, ideas help us understand what motivates “high-risk activism” and other forms of costly behavior. Each of these phenomena is puzzling for electoral accounts, but attention to ideas helps reveal underlying motivations. Finally, ideas help account for the varying timing and content of reforms. Reform may not accompany an electoral opening until principled ideological actors gain power, and reforms that occur under similar electoral conditions may vary widely in their content depending on the ideas motivating institutional change. To be clear, I do not argue that strategic considerations are wholly irrelevant. Rather, acknowledging that strategic accounts dominate the literature on reform and contribute useful insights, I argue that attention to ideas can also help us understand why some actors engage in court building, especially where rational-strategic accounts fail to anticipate the absence or incidence of reform, thereby providing a fuller understanding of judicial change. Thus, attention to ideas and agency contributes to an understudied area of institutional development, helping to resolve central puzzles of existing explanations and develop our theories of legal and judicial change.

Judicial Council Reforms in Mexico

Courts across the Mexican states have been fairly uniform over the last twenty years with one major exception—the presence and configuration of judicial councils. Judicial councils are administrative structures within the judiciary that, in their strongest form, take charge of all oversight, supervision, hiring, and disciplinary responsibilities, that is, the court’s “housekeeping functions,” allowing judges to focus on judging. This division of labor should yield gains in the quality and efficiency of decision making, and thus enhance the overall accessibility and performance of courts. Further, in conjunction with merit-based career guidelines, these independent administrative organs yield personnel decisions that are more credible. Traditionally, senior, second-instance judges (magistrados) on the state supreme court (Tribunal) met in private to discuss these issues, resulting in highly subjective and discretionary decisions. One former councilor from Aguascalientes recalled that historically magistrados had “total discretion” to hire judges and other employees, and that this frequently meant judgements went to “relatives, friends, and people who had done favors.” This practice generated politically charged loyalties with magistrados in order to enter and ascend within the judiciary. Given that magistrados often owed their own positions to the governor, loyalty networks typically extended from entry-level staff up to the governor’s office. Judicial councils dismantled this loyalty-based scaffolding, enhancing merit-based hiring and review, and improving competence and administrative capacity.
Four critical issues arise in evaluating judicial councils: powers, composition, the selection process for councilors, and infrastructure and career structure. First, strong councils have broad powers to review and decide administrative issues, including preparing and executing the court’s budget, institutional planning and development, as well as all hiring, promotion, disciplinary, and termination decisions. The strongest councils wield oversight and disciplinary powers even over magistrados. Second, strong councils have a mixed composition of representatives from the executive, legislative, and judicial branches, but preserve a judicial majority. The diversity of councilors enhances accountability, and preserving a judicial majority protects judicial independence and the separation of powers.

Regarding selection to the council, councils named directly by the state court president are the weakest. If the court president owes her position to the governor, then there may be little practical difference between this mechanism and direct selection by the governor. In contrast, strong councils democratize the selection process, choosing representatives by vote or random draw. Councilors selected via democratic, peer-based elections are generally better than random selection processes that might sacrifice competence for the sake of impartiality. If chosen by election, a vote by the full complement of judges is better than where only magistrados vote since broader elections reduce the possibility that councilors will simply parrot the preferences of the state’s high court. Finally, councils should have a permanent infrastructure. Weak councils may have no physical location or support staff, and might even be part-time or honorary appointments. Strong councils are also empowered with transparent and merit-based rules governing the judicial career, rules that guide the council’s hiring and disciplinary powers. Thus, a strong career structure is integrally linked to the effectiveness of council powers over personnel. Aside from distancing the governor from judicial selection, career guidelines reduce political influence generally and establish barriers to entry for recent political appointees.

Ideas and Their Observable Implications

Ideational explanations highlight the influence of nonmaterial, principled ideological commitments. That is, actors react less to material, cost-benefit calculations inherent in interest-based, rational-strategic accounts, and respond more to deeply held commitments of a nonmaterial nature regarding the role of courts in society. Notably, clearly conceptualizing the nature of ideas can be difficult, posing methodological challenges. Nonetheless, such difficulty “cannot justify shrinking from elements that are deeply constitutive of institutions.”

Comparative studies of judicial reform help conceptualize the kind of principled programmatic commitments highlighted here. These studies teach us that both left- and right-leaning actors can promote reform, but for very different reasons. That is, leftist and rightist actors are both motivated by ideas, but the content of their ideas differs. Conversely, the absence of these commitments identifies actors as nonideological.
On the left, programmatic actors tend to emphasize the social dimension of democracy, favoring a stronger role for public institutions in the tutelage of fundamental rights, and seeking to enhance the real effect and substance of individual rights and liberties. These substantive protections contribute to the depth and quality of democratic citizenship. Conversely, the right tends to emphasize economic factors, favoring a reduced role of the state, the security and predictability of property and contracts, as well as public safety in the quest to establish the right business conditions for efficient markets. Stated starkly and provocatively, leftist actors favor democracy promotion and rightist actors favor market promotion.

This ideational contrast between left and right finds support in the comparative literature on court building, including Patricia Woods’s progressive “judicial communities” in Israel and Ran Hirschl’s pro-market, neoliberal elites in Israel, Canada, South Africa, and New Zealand. Lisa Hilbink’s study of the key roles of (a) leftist parties and (b) a progressive clergy in “ politicizing the law in order to liberalize politics” in Spain’s transition to democracy also supports the argument. More recently, Rodrigo Nunes highlights the role of market-oriented judicial elites in the construction of the Colombian Constitutional Court. Separately, Woods and Hilbink, along with Cesar Rodriguez-Garavito, also draw attention to ideologically tinged visions of constitutionalism, contrasting a new progressive, left-leaning neoconstitutionalism against a conservative, right-leaning, neoliberal constitutionalism.13

Concrete empirical implications flow from theoretical propositions based on principled ideological commitments. First, there should be actors framing reform projects as part of broader projects of either democracy promotion or market promotion. However, behavior that conforms to this expectation is only weak evidence in favor of the argument since actors motivated by rational-strategic interests may also articulate principled justifications. Still, a necessary empirical implication is this kind of ideational framing. Second, an observable implication that is unique to ideational arguments—and therefore behavior that comports with this expectation offers stronger evidence in favor of principled commitments—is that principled behavior can be costly in ways that rational-strategic behavior is not. That is, where conventional “electoral market” arguments anticipate an analysis of material costs and benefits that leads to risk-averse behavior, ideational logics suggest nonmaterial principles motivate actors, so we may observe costly or risky behavior, resonating with what social movement scholars have termed “high-risk activism.” To be sure, electoral accounts frequently claim to explain the seemingly costly and counterintuitive puzzle of sitting majorities delegating power to the courts. However, the key insight of those accounts is that delegating power to courts is actually less costly for declining or outgoing majorities in the long term than failing to delegate that power and later being a political minority in the absence of a protective court. In contrast, the ideational argument advanced here anticipates that principled actors, even electorally ascendant ones, may delegate power to courts because doing so conforms to an idea of the proper role of courts in society. If observed, this costly behavior—specifically, an executive self-constraining by creating a strong judicial council when electoral uncertainty is low or absent—constitutes strong evidence.
of principled rather than prudent behavior. Behavior that is similarly risky or costly indicates that behavior was motivated by ideas, not interests.

Theoretical Alternatives

Current research shows electoral competition exerts upward pressures on the performance of public institutions, improving legislative performance and institutionalization, educational spending, and human rights. Scholars of judicial politics find similar positive effects of electoral competition. The expectation of electoral defeat generates incentives for current majorities to strengthen the judiciary as a prophylactic measure, or “insurance policy;” divided government enhances judicial independence, and generates incentives for judges to promote case results strategically to expand court influence; and smaller margins of victory translate into stronger judicial budgets.

However, three disparate causal logics underpin the electoral explanations of judicial change cited above: (1) reelection, (2) signaling, and (3) insurance. First, the “reelection logic” anticipates that interparty competition generates incentives to be more responsive to the electorate’s demands for functioning institutions, including accessible, efficient, and independent courts. In short, electoral competitiveness has a “lasting effect by forcing all parties in government to perform better if they aspire to win the next election.”

The empirical implication is that “best policies” toward the judiciary should be observable as part of strategies geared toward electoral success. Current or aspiring politicians should champion judicial council reforms as a means of gaining or remaining in office. As noted by Matthew Cleary, this logic requires a clarification in Mexico where there is a long-standing prohibition against reelection. However, reelection is not the only reason incumbents seek successful policies. Candidates also do so to build good reputations as politicians because they want to run for higher office. Furthermore, parties place a premium on successful policies in order to stay in power, and unsuccessful politicians are unlikely to be rewarded with future party candidacies and support. Thus, individual career and party ambitions generate the same electoral incentives as reelection.

Second, the “signaling logic” follows from studies of strategic commitments and precommitments. Many constitutional changes require a legislative supermajority. Where competition has at least partially fragmented power so that no single group holds both the executive office and a legislative supermajority, actors belonging to a simple majority or plurality may not have an interest in further weakening themselves by delegating power to the courts, but they also recognize they are not sufficiently powerful to pass preferred policies on their own. In order to achieve those preferred policies, the signaling logic anticipates that the larger group will “bind itself” by strengthening courts as a signal to the smaller, less powerful group that the larger group can be trusted, thereby hoping to gain enough support for the larger group’s preferred constitutional changes, and even for simple legislative changes if the larger group consists of only a plurality.

The signaling logic also requires a clarification because it closely resembles a strategic bargaining logic associated with veto constraints. A core insight of this bargaining
logic is that increasing the number of relevant political actors makes reform more difficult, and policies are the result of compromises that satisfy or pass all veto points. In this way, the bargaining logic explains the shape or content of reform but, like signaling, also anticipates that competition leads to less reform, not more. Crucially, however, the bargaining logic does not explain the original motivation for reform. In contrast, the signaling logic accounts for this motivation, as do the other electoral accounts presented here explaining why actors would want to build stronger courts. Bargaining illuminates the constraints that shaped the final contours of the reform, but does not explain why actors initiated the reform in the first place. Thus, bargaining operates more as an intervening variable once reform initiatives are underway, not as an explanation of the origins of those initiatives.

Third, building on the theoretical insights of William Landes and Richard Posner, more recent work by Tom Ginsburg and Jodi Finkel advances an “insurance logic.” Competitive elections create political uncertainty, and uncertainty generates incentives for insurance, or “[a]s democratization increases electoral uncertainty, demand for insurance rises.” In autocratic or single-party dominant environments that are transitioning to greater electoral competition, strengthening the judiciary operates as a kind of safeguard in that current majorities, as future minorities, accept the short-term costs of strengthening the judicial branch in order to gain the long-term benefit of judicial protection. Necessary empirical implications are that a majority in decline and positive judicial change should be observed prior to an election where present majorities anticipate losing that election or, having lost an election, prior to leaving office. Also, the reform must yield real improvements in the court for the institution to effectively provide insurance.

Data and Methods

The process-tracing approach in each state draws on archival evidence, interviews, and direct observation. Archival evidence includes state constitutions, administrative regulations, legislative bills, and annual court reports. Sixty-one personal interviews with judges and other legal elites add another stream of evidence, and observations conducted during fieldwork provide insights that would have been difficult to reach otherwise. Relying on these sources, I construct a theory-guided analytic narrative that traces the process of judicial change in each state. The logics outlined above yield empirical implications regarding what this causal process should look like; that is, each theoretical alternative implies an expected causal pattern. Some of these implications are necessary, while others are unique. Causal inferences in favor of the principled ideological argument are strongest when a necessary implication of an electoral logic is absent and a unique implication of the principled-ideological logic is present. Thus, by systematically judging expected causal patterns against observed causal processes, I identify key evidentiary markers, including the timing and sequence of events, clarifying both mechanisms and motivations and adjudicating among rival explanations.
Case Selection

The three states analyzed here express similar structural conditions but vary on key explanatory variables, constituting “most similar” systems. All three states share critical factors relevant to the study of the judiciary, including a common legal tradition (civil law) and a shared legal culture. Controlling for a common rival explanation of judicial change, all three states are subject to the same federal pattern of centrifugal, center-to-margin policy diffusion regarding judicial councils. In this regard, the critical event is President Zedillo’s federal reform of December 1994, the timing and content of which all states were exposed to equally but which filtered through different local political conditions.

The selection of cases focuses on choosing states that (1) experienced rising levels of electoral competition, conceptualized as decreasing margins of victory or actual alternation in power (especially movement away from PRI dominance), and (2) represent the main kind of variation in ideological conditions. Aguascalientes is an instance of a right-leaning, market-oriented setting that saw the PAN rise to power, and Michoacan offers an example of a left-leaning environment that saw the PRD rise. Contrasting with both Aguascalientes and Michoacan, Hidalgo is an instance of a nonideological environment. Given PRI continuity in Hidalgo for the last eighty years, the state is almost by definition noncompetitive, but it has experienced incipient competition in that the PRI’s dominance in the legislature remains but has decreased to 62 percent. How have council reforms fared in these different ideological contexts within Mexico?

Councils in Three States

Following the guidelines above, Table 1 classifies the strength of councils in Aguascalientes, Michoacan, and Hidalgo, generating a reform index. A dichotomous variable captures the presence or absence of each of the properties mentioned above, and a standardized measure (0–1) summarizes council strength both within each dimension and overall (Aguascalientes receives two scores, for 1995 and 2001). Figure 1 graphs the index over time, offering a longitudinal view of council strength across the three states. This graph shows Aguascalientes’s council appeared first but then lost strength, and then councils appeared in Michoacan and Hidalgo, though much stronger in the former than the latter. The plots below the zero line refer to steps in the reform process, which is not reported in Table 1 but is presented in Table 2 and discussed in the section on causal analysis. For instance, in Michoacan there are two “bumps” in the graph below the zero line, indicating reform initiatives long before the reform was approved and a slower pace of change.

In Aguascalientes a sweeping reform in 1995 created the judicial council. Initially, the council had strong budgetary, supervisory, and disciplinary powers, and these powers were complemented by a requirement that all sitting judges and magistrados take an exam to keep their jobs. Also, occupants of many high positions in the executive, legislature, and party organizations were barred from becoming magistrados within
a year of occupying those positions. However, the governor still influences the selection of magistrados by reviewing candidates proposed by the council and recommending three to the legislature.32

Despite these positive changes, the Aguascalientes council was weak in terms of its structure and composition. The reform created a nonpermanent and part-time organ where members kept their separate, full-time jobs, requiring a kind of double duty. Moreover, the council does not have its own office; that is, it does not exist as a physical entity apart from its individual members. In addition, only three of seven councilors represent the judiciary. The other four members represent the political branches—two from the executive and two from the legislature.33 Thus, the council is structurally weak and majority-political, and the executive retains a strong presence in naming two of the seven councilors. Finally, a 2001 counterreform removed all of the council’s budgetary, oversight, and disciplinary powers, leaving a structurally weak council in charge of only the lower-level judicial career.34

In Michoacan a three-year reform process produced a judicial council in 2006.35 The council is very strong in its powers, composition, and selection mechanisms, as well as infrastructure and career structure. The council is composed of five members: (1) the president of the Tribunal; (2) a magistrado elected by her peers; (3) a first-instance judge elected by means of a peer-supervised election that requires the participation of judges;36

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Reform Index: Measuring Judicial Councils in Three States</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Powers</td>
<td></td>
</tr>
<tr>
<td>council powers (budget)</td>
<td>1 / 0</td>
</tr>
<tr>
<td>council powers (over magistrados)</td>
<td>1 / 0</td>
</tr>
<tr>
<td>council powers (over judges)</td>
<td>1 / 1</td>
</tr>
<tr>
<td>subtotal:</td>
<td>3 / 1</td>
</tr>
<tr>
<td>standardized (0–1):</td>
<td>1.00 / .33</td>
</tr>
<tr>
<td>B. Design</td>
<td></td>
</tr>
<tr>
<td>council composition</td>
<td>0</td>
</tr>
<tr>
<td>council selection</td>
<td>1</td>
</tr>
<tr>
<td>subtotal:</td>
<td>1</td>
</tr>
<tr>
<td>standardized (0–1):</td>
<td>.50</td>
</tr>
<tr>
<td>C. Infrastructure &amp; Career Structure</td>
<td></td>
</tr>
<tr>
<td>Council infrastructure</td>
<td>0</td>
</tr>
<tr>
<td>Reduced role of governor</td>
<td>1</td>
</tr>
<tr>
<td>Exam for magistrados</td>
<td>1</td>
</tr>
<tr>
<td>Exam for judges</td>
<td>1</td>
</tr>
<tr>
<td>Barriers to entry</td>
<td>1</td>
</tr>
<tr>
<td>subtotal:</td>
<td>4</td>
</tr>
<tr>
<td>standardized (0–1):</td>
<td>.80</td>
</tr>
<tr>
<td>Total (0–1); (A + B + C)/3</td>
<td>.76 / .54</td>
</tr>
</tbody>
</table>

Comparative Politics July 2012

446
(4) a representative of the executive chosen by the governor; and (5) a representative of the legislature elected by a majority of the local congress. In addition to being permanent, full-time, and majority-judicial, the council has full administrative, supervisory, and disciplinary powers, even over magistrados.

The 2006 reform that created the council also gave it strong powers with regard to the judicial career. Sitting magistrados and judges were not required to take an exam to keep their positions, as was the case in Aguascalientes, but all future candidates have to take an exam. The council conducts all exams and evaluations, at the end of which the council presents a list of candidates to the legislature. Approval requires two-thirds of the legislature. Thus, the reform removed the governor entirely from the judicial selection process. Additionally, the reform restricted the entry of politicians to the Tribunal, noting that in the year prior to appointment magistrados could not occupy the post of attorney general, state legislator, or secretary in any of the departments of state government.

In Hidalgo a 2006 reform formally created a judicial council. At first glance, the content of Hidalgo’s reform appears strong. The council is a permanent, full-time organ with its own offices, and it enjoys administrative, supervisory, and disciplinary powers over first-instance courts. It also reflects a majority-judicial composition of five members: (1) the court president; (2) a magistrado; (3) a first-instance judge; (4) a representative of the executive; and (5) a representative of the legislature. Upon closer examination, however, the reform reveals several weaknesses. Magistrados, their clerks, and other support staff are exempt from council supervision. Contrasting with the Michoacan council,
which is expressly authorized to oversee the work of magistrados, Hidalgo’s council is expressly prohibited from doing so. Also, while the council has a judicial majority, the first-instance judge is selected at the discretion of the magistrados, not by her first-instance peers as in both Aguascalientes and Michoacan. Thus, all three judicial representatives reflect the interests of the high court, mainly its president. Given that the president is nominated by the governor, the judicial majority has loyalty incentives to the governor.

Exacerbating the perpetuation of loyalty networks, magistrados in Hidalgo remain exclusively political appointments. The governor still controls the judicial selection process, sending the names of preferred candidates to the legislature for approval, bypassing the council. Given the elite-controlled context and the powerful role of the governor, the ratification is a mere formality. Thus, the Tribunal remains a highly politicized body, often occupied not by judicial specialists but by political favorites, indicating continuity not only of the PRI in office but also in institutional arrangements of a bygone era. Other glaring signs of this continuity are the presence of clear conflicts of interest and nepotism on the state’s highest court. Moreover, where the state constitution initially appears to break this continuity by precluding anyone from becoming a magistrado if they recently occupied an elected post, a later subsection specifically exempts magistrados from this prohibition. Thus, there is no barrier to the entry of recent politicians to the Tribunal, as in both Aguascalientes and Michoacan.

Causal Analysis

The presence or absence of ideological commitments best explains the observed variation. Starting with the case of nonreform, Hidalgo demonstrates how the lack of principled-ideological influences leads to the absence of real judicial empowerment. The examination of Aguascalientes and Michoacan demonstrates how rightist, market-oriented principles and leftist, democracy-oriented principles, respectively, motivate reform. Table 2 summarizes these findings. Thus, the analysis explains (1) the absence of reform (Hidalgo); (2) real reform (Aguascalientes in 1995 and Michoacan); and (3) real counterreform (Aguascalientes in 2001).

In Hidalgo judicial change has come late and superficially. Indeed, the 2006 reform, which interviewees identified as the judiciary’s key moment in the last twenty-five years, reveals shallow changes and continuity in some of the most striking areas, including politically controlled selection to the Tribunal. Thus, despite undergoing a formal process of reform, the lack of meaningful change in Hidalgo justifies classifying the state as a case of nonreform.

Two weeks after announcing a judicial reform project on March 21, 2006, PRI governor Miguel Angel Osorio Chong proposed the formation of a judicial council. Prior to the announcement, there was no indication the governor planned to form a council. The council project was not among planned reforms in the State Development Plan for 2005–2011, and interview evidence indicates the project was not part of Osorio’s campaign or first year in office. Yet scarcely five months after it was
first announced, the law was approved, and the council was formally established on August 15, 2006.50

The trajectory of the first council president, Alma Carolina Viggiano Austria, helps explain the surprising arrival of the council. Recognized by many as a good administrator, Viggiano was a consummate politician prior to entering the judiciary. She belongs to the historically powerful Austria family, and interview and journalistic accounts place her squarely within dominant local political elites.51 Viggiano was a state and federal legislator for the PRI, a cabinet member for the current and previous state governments, campaign coordinator for the current governor, Osorio, as well as local campaign coordinator in 2005–2006 for the PRI’s presidential candidate, Roberto Madrazo.52 After Madrazo’s failed run at the presidency, Viggiano was “on leave” from politics in mid–2006.53 Several interviewees note that Osorio agreed to create the council for Viggiano as a stepping stone to the state supreme court. Viggiano could restart her public life, but Osorio also had his own incentives. He needed to reward Viggiano for managing his successful campaign for governor, and he wanted to replace the court president at the time, Francisco Díaz Arriaga, who was involved in a very public corruption scandal.54

The events of 2006 unfolded accordingly. It should be noted these events transpire twelve years after the national council reform. Given that Hidalgo is contiguous with the nation’s capital, the fact it took this long for the council reform to spread less than 100 kilometers cuts against diffusion explanations and suggests no local desire for reform.

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Table 2  Summary of Causal Analysis

<table>
<thead>
<tr>
<th></th>
<th>Aguascalientes</th>
<th>Michoacán</th>
<th>Hidalgo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council strength (0–1)</td>
<td>.76</td>
<td>1.00</td>
<td>.52</td>
</tr>
<tr>
<td>Ideas motivating reform</td>
<td>rightist, market-oriented</td>
<td>leftist, democracy-oriented</td>
<td>neither (patronage preservation)</td>
</tr>
<tr>
<td>Timing of reform</td>
<td>Early</td>
<td>Late, but early in state’s first PRD administration</td>
<td>Late</td>
</tr>
<tr>
<td>Pre-reform consultations</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Pace of reform</td>
<td>Moderate</td>
<td>Slow</td>
<td>Fast</td>
</tr>
<tr>
<td>Governor’s seat share at time of reform</td>
<td>83%</td>
<td>43%</td>
<td>72%</td>
</tr>
<tr>
<td>Majority required for reform</td>
<td>66%</td>
<td>50% + 1</td>
<td>66%</td>
</tr>
<tr>
<td>Re-election logic</td>
<td>No</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>Signaling logic</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Insurance logic</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Reforming party did not anticipate mid-term defeat, much less alternation</td>
<td>Reforming party (PRD) was electorally ascendant</td>
<td>Reforming party did not anticipate an impending electoral loss</td>
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Matthew C. Ingram
With no previous policy position on judicial councils, and with strong historical opposition to councils among local judicial elites, Osorio promoted the council’s creation in March. The reform was approved quickly, unanimously, and without much discussion by June 8. Three weeks later, the state legislature unanimously selected Viggiano as its representative to the council, and the council was operational by August 15. After one more month, the scandal-ridden Díaz Arriaga resigned, and Osorio nominated Viggiano to the court on October 5. Again by unanimous vote, the legislature ratified Viggiano on October 10, and only one week later Viggiano’s peers elected her court president. Thus, long after the “best practice” of judicial councils had been in national circulation and in less than seven months between March 21 and October 10, 2006, the council project appeared for the first time, was drafted into a bill, approved by a supermajority, staffed and made operational, and Viggiano made the triple transition from councilor, to magistrada, to court president.

In addition to these timing issues, the content of the reform reveals the lack of any serious commitment to empower Hidalgo’s judiciary. Rather, local elites strengthened their hold on power by, in part, maintaining a subordinate and highly politicized judiciary. Indeed, the president of the administrative court is also a former PRI legislator, and senior judges frequently make transitions to and from political careers. Thus, the boundaries between branches, as well as between party and state, are obscured in much the same way as they were nationally during the decades of PRI hegemony from 1929 to 2000.

Turning to Aguascalientes, the principal judicial changes consisted of the positive 1995 reform and the negative counterreform in 2001. First, in 1994 the PRI occupied the state executive office and dominated the legislature, and PRI governor Otto Granados Roldan (1992–1998) became the main engine of reform. Granados belonged to the newer, technocratic priista generation. He was an economically liberal politician who began governing during the approval of the North American Free Trade Agreement. Similar to the neoliberal, market-oriented elites identified by Hirschl, Nunes, and Rodriguez Garavito, Granados emphasized reforming the legal sector as part of a broader strategy of market integration. He had twice attended the World Economic Forum, was especially sensitive to the gains from court strength for economic competitiveness, and sought to strengthen local courts in order to place the state more firmly within global markets. In his own words, Granados noted that by mid–1994, “my professional training as a lawyer, plus the sensibility I had regarding the critical role of the justice system for the state’s economic competitiveness, led me to conclude that perhaps it was a good time for reform.” A prominent member of the judicial council during the Granados era expressed a similar sentiment, noting that “the full functioning of the judiciary has an eminently economic spirit.” Thus, despite a formal affiliation with the PRI, Granados Roldan’s ideological views resembled those generally associated with the neoliberal, pro-business wing of the rightist PAN. It was these ideas that motivated the reform.

Granados inaugurated a Judicial Reform Commission on October 6, 1994. Two months later, in December 1994, President Zedillo announced a national reform project, including the creation of a judicial council. The national reform caught many observers by surprise, proceeded quickly, and was approved by December 31, 1994. Due to the
proximity of Zedillo’s reform, the Aguascalientes reform is conventionally understood as an example of centrifugal policy diffusion in which Granados merely copied Zedillo’s national reform.\textsuperscript{65} Yet Granados was already considering a reform and had a working commission two months before Zedillo’s reform. Granados noted that he favored incorporating a judicial council from Zedillo’s project into the state reform because it complemented Granados’s goals but that the council was merely added to a reform project already underway.\textsuperscript{66} Although the Aguascalientes council has a weaker configuration than the national council, exhibiting a political majority instead of a judicial one, the reform nonetheless transferred administrative powers to the council and required all sitting judges and magistrados to submit to a proficiency exam, a requirement that went beyond the contours of the federal reform.\textsuperscript{67}

Judicial elders resisted this transfer of power and examination requirement.\textsuperscript{68} Importantly, by insisting on the exam requirement not just for lower judges but also for magistrados, as well as an exam for future magistrados, Granados was submitting his own sitting judicial appointments to the exam and reducing his own power to select judges in the future. This self-restriction and the willingness to confront judicial elders is the kind of costly behavior that shows Granados did not simply follow Zedillo’s lead, but that he was motivated by his own ideas about the positive relationship between strong courts and efficient markets.\textsuperscript{69} Further, in 1994–1995, the PRI occupied the state executive office and dominated the legislature with 83 percent of seats, so there was little political resistance to the project. In this environment, it would have been easy to maintain the status quo or even to accrue greater powers, but Granados delegated power to the courts, offering further evidence that Granados’s expressed neoliberal, market-oriented ideas motivated the reform.

The second analytic moment in Aguascalientes began in 2000. Following the PAN’s first statewide victory in 1998, the party occupied the executive and 62 percent of legislative seats. In this context, it would have been relatively easy for the PAN to further improve the judiciary, just as it was easy for Granados in 1994–1995. However, the new governor, Felipe Gonzales, proposed a budgetary law that would give the PAN-controlled legislature expansive powers over judicial spending, essentially granting his party control of the court’s budget. Internally, judicial elders continued resisting the 1995 reform. Led by court president Cleto Humberto Neri, magistrados lobbied for and obtained a counterreform on October 26, 2001.\textsuperscript{70} This counterreform removed most of the council’s powers, returning them to the Tribunal, presided over by Neri himself. Since 2001 the council has been in charge only of supervising the lower-level judicial career. Figure 1 reports this weakening of the council as a drop in the dashed line. As late as 2008, most magistrados preferred a limited council with no administrative and disciplinary powers, especially over magistrados.\textsuperscript{71}

The corrosive influence of Gonzales and the PAN was unexpected given the party’s national reputation as neoliberal and market oriented. However, interviewees highlight the traditional, clientelistic, nonprogrammatic character of the PAN in Aguascalientes.\textsuperscript{72} The local branch of the PAN has not exhibited ideological consistency on economic issues, and has more closely resembled a mix of socially conservative, Catholic currents
within the party, and traditional, clientelist relations. These sources also noted Gonzales’s hostility to strong institutions and his efforts to protect traditional sources of authority and patron-client relations. Neri and his colleagues could not have succeeded with the counterreform without the help of the political branches. If ever there was an easy opportunity for the PAN to strengthen courts, it was during the unified government of 1999–2001, when Gonzales could have drawn on his party’s 62 percent legislative majority to build on gains from 1994–1995. Rather, Gonzales sought to control the courts and was amenable to regressive, old-guard judicial activism that rallied “beyond the bench” to recapture their institution.

Turning to Michoacan, the first PRD administration in the state (2002–2007) under Lazaro Cardenas Batel promoted a judicial reform alongside dramatic budgetary increases in 2002–2003. The reform emphasized a judicial council and was driven primarily by the PRD and a group of progressive judges.

Cardenas Batel selected Alejandro Gonzalez Gómez and Jaime Del Rio to develop the first council project. Both Gonzalez and Del Rio formed part of a close group of legal advisors to the incoming governor, discussing the reform even before Cardenas Batel took office. Del Rio wrote a first draft of the reform in late 2002, suggesting budgetary increases for 2003 and detailing the council project, and interviews called Gonzalez the “tip of the spear” of judicial reform in Michoacan. Both Gonzalez and Del Rio pursued doctoral studies in law in Spain, where they were profoundly influenced by the progressive, anti-Franco activism of judges. These two future judicial leaders were joined in the reform process by others who had also studied law at Madrid’s Universidad Complutense. Thus, a core group of legal elites in the state drew its intellectual lineage from progressive currents in Spain. The sources of this progressive constitutional culture included Enrique Gimbernat (a prominent Spanish scholar of criminal law) and Alvaro Bunster Briceño (an equally prominent Chilean scholar of criminal law who had been ambassador to the UK under Salvador Allende and later taught in Spain). Gonzalez noted these influences, as well as other members of “Judges for Democracy” in Spain’s transition to democracy, including one of their leading figures, Perfecto Andrés Ibáñez. Also while in Spain, Del Rio’s doctoral research focused on judicial councils. Drawing on lessons from the Spanish experience, Del Rio sought a constellation of best practices for Michoacan.

Interviews highlight that Cardenas Batel’s personal commitment to a strong judiciary was part of his vision of democracy, and qualitatively different from his predecessors. As was the case with Granados in Aguascalientes, Cardenas was willing to promote new institutional designs and career structures that would constrain his own power in ways that were historically highly unusual among Mexican governors. Most notably, his reform would erase his ability to participate in the selection of judges, even to the state’s highest court. Restating, his support for the judicial strengthening project, including not only the council reform, but also a historic budgetary expansion, continued despite the fact that the reform would remove his influence in the judicial selection process and build a judiciary that would have a substantially more autonomous administration. That is, Cardenas engaged in the kind of costly behavior that is
evidence of principled commitments. It should be noted that Cardenas supported this proposal despite the fact he had just won the governor’s office and was electorally ascendant, cutting against all electoral logics and in favor of ideational motivations.

Outside the judiciary, resistance came from the PRI. From 2002–2004, the PRD held only 23 percent of legislative seats and the PRI held 57 percent. Inside the courts, a principal source of resistance came from several magistrados closely identified with traditional power relations within the judiciary and the PRI, and an outside organ like the council threatened to disrupt longstanding clientelist networks of patronage and control within the judiciary.\textsuperscript{52} Opposition also came from other magistrados and judges who, while sympathetic to the progressive judges and PRD, nevertheless sought to protect their own interests, for the reform would also require accountability for judges’ work for the first time in Michoacan’s history. For instance, until November 2007, not a single chamber of the Tribunal had ever been reviewed for work quality.\textsuperscript{83} It is not surprising, then, that three magistrados resigned after the council began operating in May 2007.\textsuperscript{84}

The strength of the anti-reform, traditionalist alliance changed in 2005–2006. In 2005 the PRD’s share of seats rose to 43 percent and the PRI’s dropped to 38 percent, making Cardenas’s party the largest one. Further, progressive judges led by Gonzalez Gómez lobbied their colleagues to generate an 8–7 majority within the court that was sympathetic to reform. This progressive majority among judicial leaders joined PRD politicians to lobby outside the courts, leaving the traditionalist elements as a minority in both the judiciary and the legislature. Notably, constitutional reforms require only a simple majority in Michoacan.\textsuperscript{85} The PRI realized it could not block the reform but could limit it by proposing an alternative project and bargaining votes with the PRD. To dilute the council project, the PRI proposed an “Administrative Commission,” a weak version of a council, remaining subordinated to the Tribunal.\textsuperscript{86} Further, the PRI and judicial traditionalists proposed a judges-only composition. Though this proposal was rejected, the bargaining process benefited the PRI in that it secured a representative on the mixed council who was sympathetic to the PRI and old-guard judges.\textsuperscript{37} Despite this concession, the reform resulted in a strong council. Indeed, this council remains one of the strongest in Mexico today.

Regarding the alternative, election-based explanations of reform, the evidence either strongly favors the ideational argument or cuts entirely against electoral accounts. First, the reelection logic receives only weak support. It is not possible to entirely discount the fact that politicians perceived electoral value in advancing reform. However, none of the case studies provides evidence that reform was primarily a response to incentives to generate the “best policy” for the sake of electoral success. In contrast, the evidence strongly supports the role of ideas. Moreover, the counterreforms in Aguascalientes cut against the reelection logic. If all politicians have this incentive, why did the PAN-aligned government approve the counterreforms? Also, in the strongest case of reform, Michoacan, the project began quietly after the election, not as a means to attract votes. Given the lack of competition in Hidalgo (PRI held dominant supermajorities through 1999, and no fewer than 62 percent of seats since 2000), this logic is unexpected. Alternatively, some observers may consider the incipient
competition in Hidalgo sufficient to trigger the reelection logic, but in that case we should see a more meaningful reform, not a superficial charade. Finally, the fact that judges—actors who do not respond to election incentives—should be such central players in the reform efforts, as negative counterreformers in Aguascalientes and as positive architects and lobbyists of the reform in Michoacan, is unanticipated by the reelection logic.

Similarly, there is only weak evidence for the signaling logic. The Hidalgo reform does not generate real, objective strengthening, so it cannot be considered a credible signal or precommitment. The Aguascalientes reform did not have an audience for this kind of signaling since the PRI dominated both political branches in 1994. In Michoacan the incoming PRD administration initiated a strong reform process in 2002 when the party had only 23 percent of seats in the legislature, and the reform was blocked by the PRI majority. None of the states offers evidence consistent with a signaling account.

That said, and recalling the important difference between the motivations anticipated by the signaling logic and the intervening effect of a bargaining logic, Michoacan offers evidence of the latter bargaining once the reform was initiated. Specifically, the veto constraints created by the PRI majority in the legislature initially blocked Cardenas’s reform (2002–2004). After the PRD gained seats in 2005 and the PRI became the minority, the PRD’s lack of a clear majority granted the PRI leverage to force a compromise. Thus, ideas best explain the origins of this reform, but strategic bargaining helps explain the final shape of reform. Bargaining was also at work in Hidalgo, though now in the absence of veto constraints. Osorio’s PRI controlled the legislature and did not have to negotiate with an opposition party. Thus, where there is no ideational commitment driving reform and veto constraints are absent, reform is easy but is also largely a political charade intended to consolidate power, not to build strong courts. The bargaining logic falters most in Aguascalientes. Like Osorio, Granados controlled the legislature and yet still accomplished real judicial empowerment. Having every incentive to consolidate power, he delegated it. In this case, the role of ideas emerges in greater relief to explain reform that is otherwise puzzling to electoral market theories.88

Last, the insurance logic is also unsupported. The Aguascalientes reform was carried out by a PRI administration that anticipated staying in power. The PRI did eventually lose in 1998, but this is an ex post facto rationale, and two points are worth highlighting. First, Granados formally initiated the reform in 1994, four years before the next gubernatorial election and one year before the midterm elections of 1995. Second, local observers agree that in 1994 nobody anticipated the PRI’s eventual loss in 1998. In fact, a local political scientist noted that even the loss of a legislative majority in the 1995 midterm elections came as a surprise, shocking the local party.89 Thus, the early timing of the reform effort prior to any perception of electoral uncertainty cuts against the insurance logic.

The insurance logic also does not receive support in Michoacan. Here, the best evidence in favor of insurance-like behavior would have been a sequence of events in which the PRI, anticipating the PRD’s challenge in 2002 and drawing on the existing national model of reform, promoted judicial reform prior to 2002. Alternately, the insurance logic would also have support if the PRD had waited four or five years and
pushed for reform only when the 2008 election approached. Neither of these scenarios happened. Rather, the PRI never promoted reform as its power declined, and the PRD promoted reform immediately after winning the election, at the optimistic and ascendant start of its first administration in the state’s history.

In Hidalgo, the onset of the superficial reform might be read as consistent with the insurance logic. However, the reform is so superficial and leaves traditional power structures so intact that it fails to produce any real and objective improvement. That is, this cosmetic reform is more accurately described as nonreform. The insurance logic fails to explain why and how this patently sham reform takes place. Conversely, attention to principled commitments, or in Hidalgo’s case the absence of these ideas, explains the associated absence of meaningful reform.

Conclusion

Leveraging a subnational research design and theory-driven process tracing, the results do not support prominent electoral logics of reform. Overall, ideology explains meaningful reform, and its absence explains both the lack of reform and the incidence of counterreforms. Stated otherwise, it cannot be known when or where reform will occur and, perhaps more importantly, what shape it will take, based only on electoral conditions. The ideas and agency of actors influencing policy debates in those conditions, including politicians and judges, must be fairly and closely examined.

Judges play a meaningful role in all cases, and traditional, nonideological judges were a regressive force in all three Mexican states. These judge-led stories do not fit neatly into politician-centered accounts of conventional reform logics. Further, to the extent that judges can be opponents of court building or agents of counterreform, parts of this account contrast with research suggesting judges are ready partners to judicial empowerment projects.90 Ideology, however, helps explain the behavior of both politicians and judges. Further, judicial lobbying helps show how judges can shape the reform preferences of politicians. Notably, judge-led accounts of institutional change are both rare and recent,91 so the portion of this analysis that highlights the role of judges in both reforms and counterreforms helps fill an important gap in the literature.

The main findings regarding the role of ideas suggest three lines of future research. First, the programmatic differences between the rightist, _granadista_ PRI in Aguascalientes and the leftist, _cardenista_ PRD in Michoacan highlight that actors from both the left and right, with very different motivations for reform, can reach similar policy outcomes. Second, however, the programmatic differences between different types of actors suggest a tension between market-oriented and democracy-oriented development strategies. These strategies emphasize different goals for judicial institutions than can have profound consequences for ordinary citizens, and thus deserve more systematic attention. Third, the strong ties between jurists in Michoacan and jurists in Spain highlight the influence of international networks of legal elites. Future research that provides a better understanding of these networks promises rich insights in the process of legal and institutional change.
NOTES

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5. A criminal procedure reform approved in 2008 is generating another major institutional transformation.


8. Interview 53.


11. Ibáñez.


17. McAdam.

19. Finkel.
28. These sixty-one interviews are distributed as follows: Aguascalientes = 23; Hidalgo = 20; Michoacán = 18. Participants in the interviews included two former governors, first- and second-instance judges, lawyers, members of judicial councils, court staff, legislators, law professors, and other local experts. To protect anonymity, a random number between 1 and 100 was generated and assigned to each interview. Unless otherwise stated, all interviews are referenced only by that number.
33. CP-Ags, art. 54.
34. Ibid., arts. 51, 53–54.
37. *Constitución Política de Michoacán* (CP-Mich), art. 73.
38. LOPJ-Mich, arts. 10, 11, 13, and 77.
40. CP-Mich, art. 79.
41. Ibid., arts. 76, 77.
43. *Constitución Política de Hidalgo* (CP-Hid), art. 100; Interview 88.
44. CP-Hid, arts. 95, 96; Interviews 26 and 68.
45. Interview 66.
46. In a particularly glaring impropriety, there is at least one set of Pfeiffer cousins on the court as of April 2008. Additional interview evidence indicates Alejandro Austria Escamilla, a new member of the court as of January 2008, is President Viggiano Austria’s cousin (Interviews 56, 59, 66, 69, and 78). Two senior judges justified this kind of situation as normal and unproblematic (Interviews 78 and 79).
47. CP-Hid, art. 95, secs. VII, VIII, IX.
52. Interviews 66, 78, and 90.
53. Interview 78.
54. Interviews 3, 66, and 69; Véledez.
55. Interview 78.
56. Diario de Debates, supra note 46.
57. Interview 79.
58. Diario de Debates, Discusión de dictamen emitido por Comisión de Seguridad Pública y Justicia. Poder Legislativo del Estado de Hidalgo, October 10, 2006; Interview 79; Florentino Peralta, “Díaz Arriaga solicitó separación definitiva; Viggiano, a días de presidir TSJ.” Milenio – Hidalgo, October 6, 2006; Véledez.
59. Interview 73.
60. Interview 78; Verónica Angeles, “Presentan al nuevo magistrado del TSJEH,” El Reloj de Hidalgo, January 10, 2008.
61. Interview 13.
62. Interview with the author, April 2008.
63. Interview 47, emphasis added.
64. Fix-Fierro.
65. For example, Interview 35; Beer, 2006.
66. Interview with the author.
67. Indeed, Zedillo terminated and then replaced all but one sitting justice on the national supreme court; see Finkel.
68. Interview 5.
69. These motives also find support in the exam results. One magistrado refused to take the exam and retired, and another magistrado and two judges did not pass and were forced to leave (Interviews 5, 13, and 55).
70. Interviews 5 and 14.
71. Interviews 5, 15, and 57.
72. Interviews 13 and 35.
73. As of 2009 González Gomez was on the Tribunal and Del Rio on the state electoral court.
74. Interview 70.
75. Interview 38; Jaime Del Rio, Reform Draft (Morelia, Michoacan, 2002).
76. Interview 43 (“la punta de la lanza”); Interview 76.
78. Interview 33, 38, 43, 70, 75, and 86; two notable figures were Juan Antonio Magaña de la Mora and Emanuel Roa.
80. Interviews 12, 38, 70, 76, and 82.
81. Interview 70.
82. Interviews 12 and 38.
83. Interview 12.
85. CP-Mich., art. 164(III).
86. Interview 12; Decreto 44, 8.
87. Interview 38.
88. I thank an anonymous reviewer for helpful comments on these points.
89. Interview 35.
90. For example, Hirschl. My thanks to an anonymous reviewer for making this connection.