

Political Competition and Judicial Integrity: The Case of Mexico

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Abstract: Political competition, over time, both lowers politicians' resistance to judicial neutrality and increases their electoral motivations to honor political and economic rights of citizens, making judicial independence the least needed precisely where it is the most feasible. Empirical investigation, however, shows that competition alone is a poor predictor of the adoption of judicial reform to insulate courts from political influence in Mexican states. Competition appears to have a non-linear effect on political calculations. When competition is very weak, incumbent politicians are under little pressure to sell themselves to voters as proponents of judicial integrity. A long standing party slipping in the polls, on the other hand, may have an incentive to adopt judicial reforms as a way to bolster itself with swing voters or to protect itself from future legal depredations of the prospective new party. But when electoral margins are knife-edged, an incumbent party faces strong short term incentives to use whatever tools available, including judicial manipulation, to stay in office. This latter impulse, we expect, is stronger in transitional democracies in which clientelism and poor voter information interferes with electoral punishment of political corruption.

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1. Introduction

Political and economic rights are highly prized in modern democracies, but how are they best secured? If government is powerful enough to secure personal safety and property rights, government could potentially use that power against us and we would be paying for order at the cost of our freedom. To paraphrase Madison, we want government that is strong enough to help us but not so strong that it can become despotic.¹ Democracy alone does not remove the danger of arbitrary rule if political majorities are tempted to ride roughshod over the rights of unpopular minorities.

Madison recognized that this was a conundrum with no easy solution, but over the course of his political life changed his mind as to which horn of the dilemma was more fearsome. In the 1790s when he was lobbying states to ratify the Constitution, Madison emphasized institutionalized checks and balances that would ensure wide agreement before government could take any action. A decade later when his party swept both the executive and legislative branches of government, he craved maneuverability to get policies past recalcitrant minorities and suggested that electoral competition, as compared to separation of powers in general or an independent court in particular, was more important for a well functioning democracy.²

The concept of judicial independence is used in multiplicitous ways in modern parlance, but we take the root notion to be that courts are independent if they cannot be manipulated for political purposes.³ Whether and how courts can be made independent are separate questions that require showing when political branches are incapable of using courts as a political tool. Because the inability and disinclination to intervene in judicial rulings are often observationally equivalent, we emphasize the related concept of judicial integrity for which political incentives may be as important as the political capacity for interference. Courts can have integrity, and rule of law is therefore possible (where rule of law means that law applies equally to all, regardless of political clout) if the political branches are either incapable *or* undesirous of judicial tampering.

The United Kingdom, with its hard-won tradition of parliamentary sovereignty, provides ample evidence that robust human rights are possible in the absence of judicial independence and

¹ "In framing a government to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." Federalist 51. Kiewiet and McCubbins 1991 first dubbed this Madison's Dilemma but some call this Weingast's Paradox, based on Weingast 1992.

² Dahl 1956 and 2006, Preface to Democratic Theory.

³ It is common to focus on aspects of institutional independence such as life time tenure or constitutional provisions for judicial review, but it is a separate question as to whether those institutional provisions are sufficient to ensure insulation in practice.

formal constitutional review. In that country, it appears, competition between two majority-seeking parties adequately reins in the impulse to use judicial power to fight political battles or to reward constituents. Whether because the median voter is indifferent as between parties, or because there are many possible medians in multidimensional space each of whom can imagine being on the wrong side of some plausible majority, majority-controlled courts in the U.K. have honored the rights of individuals and minorities—including unpopular minorities such as terrorism suspects--as faithfully as putatively independent courts in the U.S. The same appears true in the old democracies of continental Europe. Although countries with the bitter experience of Nazism and fascism have adopted constitutional courts as an additional barricade against the possible reversion to populist despotism,⁴ other European democracies retain legislative sovereignty undiluted by judicial independence.⁵

Political competition may be a functional substitute for judicial independence in underpinning individual rights in the mature democracies of Europe, but it is important to recognize their circumstances that may not obtain in new democracies. For one thing, most European countries are parliamentary systems without the makings of inter-branch constitutional struggles between the executive and legislature in which a judiciary could get embroiled as a vulnerable arbiter. Strong presidents are a lightning rod for attacks from the opposition, giving them incentives to attempt to control the other branches of government including the judiciary to preempt such attacks; and the judiciary, without its own enforcement capacity by way of budget or military, is largely powerless to stop it.⁶ Secondly, the importance of a vigilant voting public in penalizing power-grabbing is difficult to exaggerate but it does not come ready-made in a “kit for new democracies.”

Judging from the lurid judicial politics in many countries transitioning to democracy, it may take many iterations of peaceful alternation in government to reach a cooperative equilibrium in which incumbents are willing to accept periods out of office without first employing every conceivable means, licit and illicit, of trying to stay in office.⁷ Particularly in low-information and poor monitoring environments, voter expectations that politicians cheat--including cheating by way of politically controlled judicial rulings--are self-reinforcing because honest behavior is unrecognized and unrewarded, leading only to the loss of relative power and electoral defeat.

Political competition is not by itself a recipe for judicial impartiality under the conditions that typically obtain in countries transitioning to democracy, because competition gives rise to a mixed set of incentives. On the one hand, as in any market, growing competition for votes forces parties to reach more voters more efficiently. This can force a shift in electoral strategy from

⁴ Ferejohn and Pasquale 2002.

⁵ Countries without constitutional review courts include the Scandinavian countries and the Netherlands.

⁶ Helmke 2008; Helmke and Rosenbluth 2009: 261.

⁷ Helmke 2006 and others.

clientelism, which is effective but expensive, to programmatic appeals that can reach a broader swath of voters with less money. To the extent that competition forces efficiency, parties become more ideologically coherent and politicians have incentives not to deliver policy or other favors that have to be paid for by other voters. Judicial integrity can be an attractive plank in parties' platforms because impartiality of justice is cheaper to offer than favors to some that have to be paid for by injustices to others. For parties that expect alternation in government, judicial impartiality also has the attractive feature that they can expect better legal treatment than at the hands of a bench controlled by partisan opponents.⁸

On the other hand, however, imminent loss of political power is likely to generate very powerful short term incentives to use whatever means are at the incumbent's disposal, particularly if there is any doubt that the new government will play entirely fair. If there is a chance that, for example, the new government would unravel the institutional protections of judicial integrity, the party making reforms would have paid a high price for poor insurance. Without observing several rounds of peaceful and fair alternation in government, the confidence in parchment barriers may be too weak to support clean politics. This is as true for elite players who make judgments about the likely actions of partisan opponents, as for voters who do or do not coordinate expectations about the electoral punishability of political tampering with the judiciary.

The mixed effects of judicial reform suggests that, depending on the level of information and common knowledge in a society, political competition will only result in greater judicial integrity under some conditions. Very low or very high levels of competition are likely to generate inhospitable incentives for judicial reform, at least until parties have had experience with alternation in government, and voters have developed expectations of clean politics.

When political competition motivated many Mexican states to adopt judicial councils in the late 1990s as barriers against political meddling in judicial personnel matters, judicial independence was not established in any secure sense. To the extent that these councils raised the visibility of political manipulation in the judiciary, they may contribute to the groundwork for more effective electoral vigilance and monitoring of wayward politicians. But it is important to see the variation in the extent to which politicians empower judges in the first place, and the kinds of circumstances in which they do.

⁸ For the idea of judicial independence as political insurance, see Ramseyer and Rosenbluth 1993; Ramseyer 1994; Ginsburg 2002 and 2003. This argument is similar to Geddes' account (1994) of why the prospect of alternation in government can motivate politicians to insulate the bureaucracy from patronage politics or of Horne's explanation (1996) for central bank independence. Bill Chavez (2003) presents evidence that competitive elections in Argentina enhance judicial autonomy.

The rest of the paper is organized as follows. Section 2 examines the logical connection between political competition and judicial integrity. Section 3 provides a descriptive sketch of the judicial system in Mexican states, before and after the establishment of judicial councils. Section 4 presents a quantitative empirical analysis of the decision to adopt judicial councils, in which we show that political competition generates mixed incentives and has a non-linear relationship with institutional design that favors judicial integrity. Section 5 concludes.

2. Political Competition and Judicial Integrity

There are reasons to question the logical connection between political competition and judicial impartiality. In the first place, ideologically motivated parties that differentiate themselves along a left-right continuum are likely to anchor themselves in constituencies with different preferences over the importance of property rights that benefit the rich versus other kinds of political and economic rights that help the poor.⁹ Parties on the right are likely to favor judicial philosophies, and to appoint justices, that emphasize minimal regulation and small government, as in the “Lochner era” in U.S. judicial history.¹⁰ Parties on the left, on the other hand, gravitate towards judicial philosophies, and to appoint justices, that interpret the appropriate role of government more broadly to include correcting past injustices and structural inequities at the expense of property rights in a narrow sense.¹¹ While both sorts of jurisprudential position can be principled in the sense that they fit within well reasoned judicial philosophies, constituencies on the left or on the right would avoid legal dispute settlement from a court with clear leanings against their interests.

In countries where the left-right dimension of politics is obscured by personalistic politics and favoritism, we can expect incumbent politicians to think about justice in even less principled terms and to seek opportunistic rulings on behalf of their supporters.¹² This situation perhaps more closely resembles that of countries such as Mexico with electoral rules that fostered particularism, especially at the state level where state governors have sometimes presided over small empires of cronyism and corruption (Magaloni and Weingast). Governors had much to

⁹ This mirrors partisan political business cycle theories as presented, for example, in Hibbs 1970 and Alesina and Roubini 1999.

¹⁰ In 1905, a U.S. Supreme Court dominated by Republican Party appointees ruled in the famous *Lochner v. New York* case that New York State’s attempts to protect workers from long hours—in this case, in a bakery—constituted a violation of the “liberty of contract” of the baker-employer guaranteed in the U.S. Constitution.

¹¹ The Warren Court that replaced the *Lochner* Court was cut from different cloth and reflected the New Deal priorities of FDR liberals.

¹² There is a parallel to political business cycle theories that emphasize opportunistic behavior by political incumbents. Nordhaus, Tufte, Rogoff and Siebert.

gain by employing the apparatus of state government as a font of favors to exchange for support, and would have little use for a judiciary that could rule against them and their friends.¹³

It is easy to see why incumbent governments, of either a partisan or personalistic sort, would be happy to have a judiciary that could help to maintain social order and underpin economic stability as long as the court would stop at the water's edge where rulings could hurt the future electoral success of the incumbent party and its supporters. This calls for a competent judiciary but one on a short leash, hardly a muscular and independent judicial body.

Political myopia notwithstanding, there are nevertheless several mechanisms by which electoral competition, once it exceeds levels that can be controlled by expenditures or regulatory favors, could lay the foundations for judicial integrity if not independence. First, incumbent governments contemplating the prospect of being in the opposition in the near future could appreciate the merits of nonpartisan justice. Stacking the deck with judicial cronies is of short lived use when the next government can do the same. Even worse, the next government might use its own court to undermine the opposition, increasing the difficulty of competing effectively in the future. A government facing the prospects of electoral decline and exclusion might seek institutional reforms such as a judicial selection process that requires ratification by a legislative super majority, granting judges life tenure on good behavior or at least staggering judicial terms so they are not coterminous with incoming governments, providing the judiciary with an adequate budget with which tampering would be in full view of the voting public, and so on.¹⁴

A problem with this logic is that, although political parties may have a long run incentive to buy "insurance" against future legal persecution by agreeing to judicial independence, parties struggle with short term incentives to renege. Political parties that succeed in barricading themselves in office can, after all, reduce the chances that they are thrown out of office anytime soon.¹⁵ It is hard to see how "parchment barriers" alone can move competing parties from a Prisoner's Dilemma to a cooperative equilibrium if the potential benefits of judicial tampering are more alluring than the less certain expected net present value of forbearing.

A second mechanism by which electoral competition can underpin judicial neutrality is by creating, over time, a multi-partisan bench provided that judicial terms are at least partially out of sync with electoral cycles. A court that reflects multiple points of view will be more effective in resisting attempts by an incumbent government to steer its decisions. But the problem with this mechanism, of course, is that it does not address the incentives a government has to ignore the

¹³ Although governors can only run for a single six year term, muting personal incentives for electoral accountability, politicians' ambitions to seek higher office can make them responsive to the voting public. In addition, individual politicians are constrained by their party's ongoing electoral incentives.

¹⁴ Ramseyer and Rosenbluth 1993; Ramseyer 1994; Ginsburg 2003; Finkel 2008.

¹⁵ Przeworski in Maraval and Przeworski. 2003.

rules by which a mixed bench is maintained. As President Menem of Argentina unabashedly asked, “Why should I be the only Argentine President not to have my own Supreme Court?” (Helmke 2005: 1). Electoral competition alone does not guarantee judicial integrity in the absence of a vigilant public motivated to penalize politicians who ride roughshod over the courts.

Judicial independence can be secured more reliably perhaps by political fragmentation, the state of the world in which the political branches are too divided among themselves to be able to mount an effective assault on the courts. When the transactions costs are high of forming a political coalition large enough to rein in errant judges, the judiciary has more room to make its own judgments, though one needs to keep in mind that the court is a collegial body of appointees, more multi-partisan than non-partisan.¹⁶ To the extent that political fragmentation contributes to judicial independence, we expect judicial rulings against the government to form an undulating pattern, rising under divided government and falling when the political branches of government are united, but typically stronger in presidential than in parliamentary systems (Ferejohn and Weingast 1992; Chavez, Ferejohn, and Weingast 2003; Rios Figueroa; Ferejohn, Rosenbluth, and Shipan 2007).

Political fragmentation as a source of judicial independence takes us back to the observation at the beginning of our paper that courts do not appear to rule best where they rule most. Elevating the courts to the guardian role assumes not only that they have the capacity to act without political motivation, but also that their judgments will be in the best interests of a democratic public, assumptions that are too infrequently scrutinized. If the rights of the English have remained secure without dragging the citizenry through the peaks and troughs of political fragmentation or assuming that judges always know best, we may be better off focusing on judicial integrity, and the incentives of politicians to honor political and economic rights, than on judicial independence per se.

Judicial integrity, as we see it, has more to do with how costly it is for voters to monitor their political representatives than about whether or not the judges can act with impunity. In a very old democracy like the United Kingdom’s where a progressively more inclusive citizenry has beaten back overweening monarchs over the span of several centuries, citizens’ expectations about what government should and should not do are well enough defined that governments overstepping expected boundaries can expect swift and sure electoral reprisals. British judges are institutionally weak in the sense that parliament can overturn any judicial interpretation by the courts, but their mandate to shine flashlights in dark corners is all that is needed to provoke an electoral response when needed. In countries with a relatively short experience with democracy such as Mexico, voters do not necessarily share expectations about what constitutes political malfeasance, or even know what the expectations of their fellow citizens about

¹⁶ Iaryczower, Spiller, and Tommasi (2002) find in Argentina, over the period of 1935-1998, that courts were 13% more likely to side with the government when it had a majority and 23% more likely when it had a supermajority.

appropriate political behavior are. They therefore have only weak incentives to monitor politicians and to punish them at the polls for irregular political actions, especially when they are at least short term beneficiaries. In transitional settings, judicial institutions that cordon off judicial personnel decisions from politics, by drawing a bright line as to inappropriate political behavior, can help to create the basis for an alert and informed citizenry of the kind that is capable of policing its own rights.

3. Law and Politics in Mexico

Mexico, like many states embarked on an extended transition to democracy, varies considerably across states in the extent to which democratic norms and practices have taken root. Particularly because Mexico is a federal system that devolves substantial authority to states, powerful governors in some regions rule over “authoritarian enclaves,” holding vast influence beyond anything that textbook democracy allows.¹⁷ Governors potentially have access to large stores of material wealth and institutional resources with which to direct local political and economic life (Magaloni 2008).

The overall scaffolding for Mexico’s judicial system is the nation’s federal structure: in addition to a set of federal courts, each of the 31 states and Mexico City each has its own system of courts. At the federal level, prior to 1994, the President appointed, with Senatorial approval, members of the Supreme Court who in turn controlled the career trajectories of lower federal court judges. This incentive structure effectively bent the entire judicial system to the will of the President and his party, for each promotion provided another opportunity for scrutiny and reward or punishment. This judicial system was incapable of implementing rule of law in Mexico insofar as legal settlements could reflect political influence along with legal merits of the case.

The federal judiciary gained a measure of independence from political influence in 1994 when the Zedillo administration established a non-partisan or at least multi-partisan Judicial Council to preside over appointments, promotions, and disciplinary matters for lower federal courts. Under the new rules, the oversight body to which judges would be accountable was this Judicial Council comprised of seven members: the president of the supreme court, three members designated by the supreme court from within federal magistrates and judges, two members designated by the senate and one by the President. The two members appointed by the senate and one by the president can be any citizen.¹⁸ It would be an overstatement to say that the Mexican Supreme Court is independent, since politicians continue to appoint its members, pass

¹⁷ Magaloni 2008; Rebolledo 2009.

¹⁸ Finkel 2005, pp. 91-95. Rios Figueroa (2007) found that political fragmentation made the judiciary more likely to rule against the PRI government when implicated in legal disputes. The percentage of judicial findings against the government increased from 4% of cases in 1994 to 44% in 1997 and 54% in 2000.

the legislation that forms the basis for its civil code, and control, in some final sense, compliance with the law (Taylor 2007). But the Mexican judiciary has gained considerable integrity as compared with its weak past (Magaloni 2003).

Each state judiciary is a microcosm of the pyramidal federal judiciary but their effects are hardly microscopic. Over 80% of all litigation originates in state courts, making them the first point of contact with the judiciary for most citizens. Each state has numerous first instance courts (*tribunal de primera instancia*) whose rulings can be appealed to the state supreme court (*tribunal superior de justicia*). Historically, senior state judges (*magistrados*) appointed by the governor had authority to direct the career paths of lower state judges, creating seamless political control of the judiciary by the governor all the way down to lower state courts.

About half of the state governments adopted a version of the Zedillo judicial reforms in the years following 1994. In the place of a judiciary that was essentially an extension of the executive branch, some states established a judicial council to stand as a neutral barricade against political control of judges' careers, and by extension, their rulings. State judicial councils possess a permanent structure with their own facilities and support staff, but their control of judicial personnel decisions varies somewhat, making it possible to place them along a continuum.

Our research adds nuance to a growing body evidence about how competitive elections might contribute to judicial reform. Jody Finkel (2003, 2004, 2005) found that the PRI was motivated to reform the judiciary when it began slipping in the polls against the PAN, and Rios-Figueroa (2007) emphasizes judicial independence when the political branches are less capable of acting in a unified way. Beer (2006) found that states with competitive elections spent more money on their judiciaries, which she took to signify authorization to act with more independence. Ingram (2009) found that electoral competition was a better predictor of judicial reform when combined with an ideological propensity of judges to fight corruption, though it is important, we feel, to emerging judicial ideology in the first place.

Cleary (2007) casts doubt on the importance of political competition for the responsiveness of municipal governments, a finding in line with our suggestion that weakening political hegemony alone need not place rights on solid ground without first improving the monitoring role of the electorate. Ingram (2008, 2009) also finds only weak evidence that political competition alone leads to improved judicial functioning. Staton (2004) comes closest to our line of analysis by emphasizing the the conditions under which an incensed electorate might impose electoral costs on the politicians who are chastised by courts for breaking legal rules. Staton is right to note the importance of transparency and political salience in predicting politicians' compliance with legal rulings, but we also expect that transparency and political salience themselves can be enhanced by the judicial institutions that give courts credibility as neutral players for future rounds of elections. We add to this literature on the Mexican judiciary, and on judicial politics more

generally, a more nuanced examination of the conditions under which electoral competition ought to improve judicial integrity by illuminating how long- and short-term incentives of politicians may work at cross purposes.

4. Econometric Analysis

Establishing a causal link between political competition and the judicial integrity is an elusive task because of the difficulty of measuring impartial justice. Ideally, we would review court cases to determine if similar cases were treated similarly and that the identity of the people involved did not affect the outcome. To get around the unavailability of those data, we look instead at institutional features that place some distance between politicians and the functioning of the judiciary.

A number of states established judicial councils as a step towards weakening the traditionally subservient relationship of the courts to the executive. But different attributes of judicial councils, not all of which necessarily come together, contribute in different ways. Moreover, a state without a judicial council might nevertheless have certain institutional characteristics that inhibit encroachment from other powers. We created an institutional index attempting to capture various dimensions of the courts' powers. The index is composed of thirteen distinct characteristics, eight that support judicial insulation and four that compromise it. Each element is given the same weight, though as will become evident, having a judicial council is highly prioritized. The positive characteristics are: 1) does a judicial council exist, 2) is the council the organ in charge of overseeing the execution of the approved budget, 3) can the council purchase its own facilities and equipment, such as buildings, 4) does the council have the power to appoint judges, 5) does the council have the ability to remove lower court judges, 6) does the council have the ability to remove high court judges, 7) can the council impose penalties, 8) has the executive been removed from appointing high court judges, and 9) is there an exam based promotion mechanism. The four negative characteristics are: 1) does the term of the president of the judicial branch coincide exactly with the term of the governor, 2) does the president have the power to impose disciplinary measures to judges at his discretion, 3) can the plenary council of the judiciary power attract and redistribute cases, and 4) can the court assign bonuses for exceptional performance.

The index was created using data from 2001¹⁹. The index takes values from -1 to 8, has a mean value of 2.53 with standard deviation of 3.23. The distribution of index values are presented in Table 1. Though we are dealing with judicial institutions within the same country we have enough variation to do an analysis

¹⁹ Data comes from Concha-Cantu and Caballero 2001

Table 1
Distribution of the Index on Judicial Integrity

Value	Frequency	Percentage	Cummulative
-1	7	21.88	21.88
0	6	18.75	40.63
1	3	9.38	50
2	2	6.25	56.25
3	2	6.25	62.5
4	3	9.38	71.88
6	2	6.25	78.13
7	5	15.63	93.75
8	2	6.25	100
Total	32	100	

It is important to note that though there is a strong correlation (.85) between the existence of the judicial council and the index, it is not perfect because this index measures multiple dimensions of judicial power and effectiveness. It is also noteworthy that there is little correlation with other measures that have been used in the literature to proxy the rule of law such as judicial spending (correlation = .15). Of the 15 states that had adopted judicial councils by 2001, 11 created them under a PRI governor, 3 under a PAN governor and 1 under a PRD governor. Nonetheless, there are states governed by all of the main parties among the eight states that had not adopted a judicial council by 2009.

We are trying to understand the relationship between political competition and judicial integrity. Political competition was measured as the percentage difference between the winner of the gubernatorial election and the runner up in the second to last election prior to 2001²⁰. We also classified political competition into three distinct groups: competitive elections (margin of difference is less than .15), landslide elections (margin of difference is larger than .50), and safe elections (elections decided with margins between .15 and .50). This classification will allow us to explore the possibility that political competition has countervailing effects at different levels.

Other independent variables used as controls were GDP per capita²¹, the log of the population, a measure of poverty, whether there has ever been a divided government (governor from one party and legislative majority from a different party) prior to 2001, and a control for the party in power in the elections prior to 2001. Summary statistics on the relevant variables are presented in Table 2.

²⁰ The data on political competition comes from CIDAC database. www.cidac.org

²¹ Data obtained from INEGI

TABLE 2: Control Variables

Socioeconomic controls					32
GDP per capita	14.68	6.96	6.38	38.15	32
Log of the Population	14.62	0.80	12.96	16.39	32
Poverty	24.65	13.87	5.00	53.30	32
Ideological controls					
PAN won last election	0.31				32
PRI won last election	0.53				32
PRD won last election	0.16				32
PAN won second to last election	0.13				32
PRI won second to last election	0.84				32
PRD won second to last election	0.03				32
PAN was the runner up in second to last election	0.47				32
PRD was the runner up in second to last election	0.38				32

Empirical Strategy

Choosing a subnational unit of analysis gives us an advantage in trying to identify if political competition is a determinant of an institutional design favorable to judicial integrity; it allows us to control for unobservables that are constant throughout the country. In cross national studies scholars constantly have to deal with the issue that countries with a better institutional design are unlike countries with a worse institutional design in unobservable ways. Using subnational comparison allows us to better controlled comparisons²². The counterfactual we are working with asks what level of institutional design a given state would have if we varied its level of political competition. The following main specification is being used:

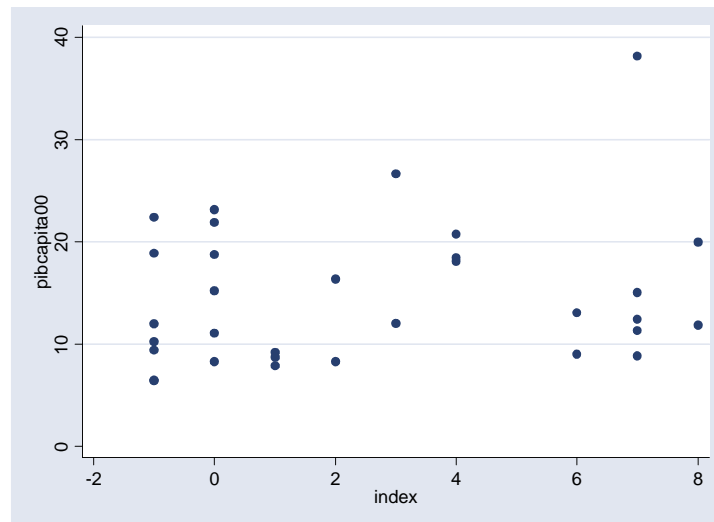
$$INDEX_x = \alpha + \beta_1 PolCom_x + \beta_2 Socioeconomic_x + B_3 Ideol_x + u \quad (0.1)$$

Where x represents a given state and hence $INDEX_x$ represents the value of the index of institutional quality for a given state x . The specification is time invariant; ideally we would like to have panel data on evolution of the index which would allow us to better capture the dynamic aspect. $PolCom_x$ is the measure of political competition, and $Socioeconomic_x$ $Ideol_x$ are the necessary controls for socioeconomic factors and ideological positions respectively.

For our coefficient of interest to be unbiased it is imperative that the $corr(PolCom, u) = 0$ which implies that we must control for possible correlates of the Index that are also correlated with

²² Snyder 2001

political competition. For this purpose we control for GDP per capita, since a case has been made that more economically developed countries are associated with both more political competition and a better legal system. From Graph 1 however we can see that there seems to be no clear link between the level of development and the level on the Index. In this same spirit we are also controlling for poverty levels and population in order avoid a possible correlation between a socioeconomic factor and political competition biasing the results.



We also include controls for ideology. To address concerns that a particular party is associated with close victories which in turn could also be ideologically committed to reforming the rule of law system, we control for party in power. Since the opposition is usually the PAN or the PRD, it is hypothetically possible that either the right would promote rule of law to protect property rights (PAN) or the left would promote the rule of law to defend the poor (PRD).

One more issue that could potentially be problematic is the reverse causality effect of the institutional framework on political competition. If the quality of the rule of law in time t-2 affected political competition in time t-1 which in turn had an effect on the rule of law index in time t then an endogeneity problem would cause our estimates to be biased. However, there are two reasons to think that this is not the case. First, under the PRI regime up to 1989²³, before gubernatorial political alternation was allowed, there was practically no variation in rule of law across states. The judiciary was always subservient to the governor and the president and virtually inaccessible to the poor. This is why we are focusing on second to last elections before 2001, since these clearly happened before the judicial reforms. Second, the literature on the rise

²³ The first opposition governor took office in 1989 after a deal was struck with the executive. Several other deals were struck around those years. By 1995 when electoral reforms took place political competition became a reality though with different degrees in different states.

of the opposition and democratization in Mexico has not attributed a causal link to a rise in the quality of the rule of law or progress in its institutional quality²⁴.

Results

The results of the econometric analysis are presented in Table 3 and Table 4. In Table 3 we are trying to correctly identify the effect of a closer gubernatorial election on the expected value of the index of judicial integrity. Specification 3.1 through 3.4 sequentially adds controls we have identified as possibly being related to both judicial index and political competition. Specification 3.1 is clean and simple and we do not get significance for the political competition variable. It is interesting to note that GDP per capita is not significant nor will it be in any specification in either Table 3 or Table 4 which is consistent with our expectations from Graph 1.

Table 3
Political Competition and Judicial Integrity

	Dependent Variable: Judicial Integrity Index			
	1	2	3	4
GDP capita	0.08 (0.08)	0.08 (0.07)	0.09 (0.07)	-0.09 (0.09)
Log Pop	1.44** (0.69)	1.54** (0.65)	1.50** (0.67)	1.80*** (0.61)
Political Competition in Gub Elec	-2.30 (2.16)	-0.83 (2.16)	-0.80 (2.19)	1.73 (2.17)
PAN won last election		2.37** (1.14)	2.33** (1.16)	2.40** (1.04)
PAN runner up two elections ago			-0.46 (1.04)	-1.35 (0.98)
Poverty				-0.14** (0.05)
Constant	-18.73* 910.42)	-21.57** (9.95)	-20.90** (10.22)	-19.72** (9.14)
N	32	32	32	32
R-Squared	0.23	0.33	0.34	.49

Level of Significance *.90 **.95 ***.99

Specification 3.2 incorporates ideology by controlling for whether or not the PAN won the last gubernatorial election prior to 2001. Adding this control reduces the value of political competition and it remains insignificant. The PAN governing dummy however, did turn out significant. It seems that whenever the PAN won the last election, it has a positive effect on the index over having either the PRI or PRD win it. When including two dummies, one for PAN

²⁴ See for example Magaloni 2006

having won and one for the PRD having won, only the PAN dummy comes out significant and is barely altered (result not shown).

In order to account for a differentiated insurance mechanism based on the opposition party gaining strength, we controlled for the identity of the runner up party in the second to last election. In specifications 3.3 and 3.4 it does not come out significant. It is important to remember that we are dealing with a small n of only 32 observations. In addition we are losing degrees of freedom as we have been adding controls, which makes it harder to obtain significance.

The last specification of Table 3 includes a control for the percentage of people living in poverty in the state. Though we are already controlling for economic development as measured by GDP per capita, this does not in any way capture inequality in the state or a more complex understanding of development. It is interesting to note, that upon adding poverty as a control, the political competition has changed signs and increased in magnitude however the variable still remains insignificant. Noting as well that poverty, unlike GDP per capita, does come out significant, further reinforcing our idea that GDP per capita is not the adequate measure of development.

From Table 3 we could erroneously conclude that there is no effect of political competition on the index of judicial integrity. The possibility remains, however, that competition does not have a constant effect but rather changes depending on the level of competition politicians are facing. In order to test the possibility of a non linear relationship between political competition and judicial integrity we created the three dummy variables referenced above: one for competitive elections, one for a safe elections, and one for landslide elections.

We do this in Table 4 presenting in a similar manner as in Table 3 by adding the same control variables. In Table 4 notice that both competitive elections and landslide elections have negative signs for every specification, which implies that having a safe election is associated with an increase of around 2 - 3.5 in the index--a substantial amount. The significance, however, is not stable for landslide elections. Once we incorporate poverty, landslide elections are no longer significant. Landslide victories of the PRI are usually associated with poorer territories more susceptible to clientelistic practices. Poverty has a negative and significant effect, so even though we cannot determine the causal relation between landslide elections, poverty and the judicial index, we know that either way they will imply a lower quality of judicial integrity.

Table 4
Political Competition and Judicial Integrity

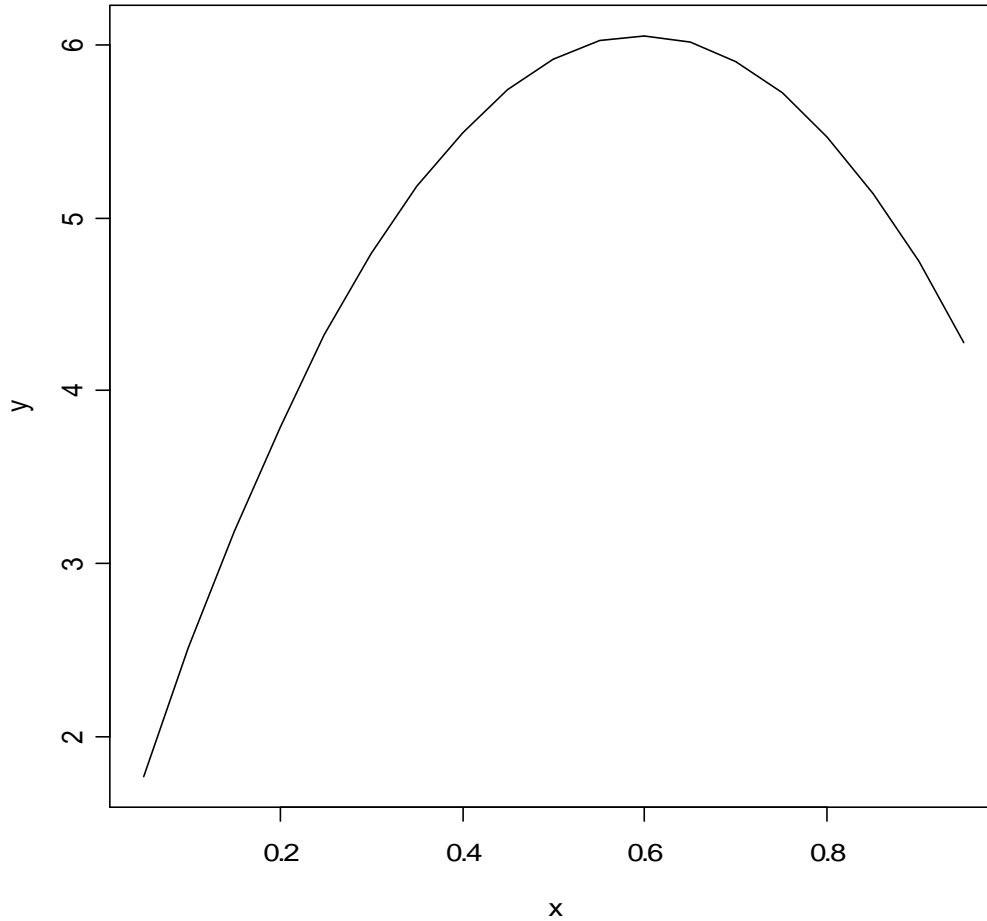
	Dependent Variable: Judicial Integrity Index			
	(1)	(2)	(3)	(4)
GDP capita	0.05 (0.08)	0.06 (0.07)	0.07 (0.07)	-0.12 (0.08)
Log Pop		1.34** (0.62)	1.26** (0.63)	1.60*** (0.53)
Competed election	-2.31 (1.41)	-2.82** (1.26)	-3.04** (1.29)	-3.61*** (1.09)
Landslide election	-3.00** (1.22)	-1.83 ^{1/2} * (1.13)	-1.90* (1.14)	-0.75 (1.01)
PAN won last election		2.80** (1.06)	2.75** (1.06)	2.79*** (0.89)
PAN runner up two elections ago			-0.88 (0.96)	-1.87** (0.86)
Poverty				-0.15*** (0.04)
Constant	3.36*** (1.51)	-17.53* (9.39)	-15.98* (9.58)	-14.37* (8.03)
N	32	32	32	32
R-Squared	0.22	0.45	0.47	0.64

The perhaps more interesting finding is that closely contested elections are associated with a worse judicial integrity index. This is consistent across specifications and actually grows larger as more of the variation in the dependent variable is being explained. Indeed, it seems that having a safe election enables the necessary reforms to take place.

We also wanted to vary our conception of political competition and controlled for whether the state had ever had alternation in the executive branch and whether a divided government had ever occurred. Neither of these measures came out significant (results not shown).

One other way of showing this non-linear relationship is by including a quadratic term of political competition. Adding a quadratic term of political competition comes out significant in any of the specifications presented in Table 4. Using the two most commonly significant variables (log of the population and poverty) at their their mean value we generated a simulation of the effect of a change in political competition on the index. The result is presented in Graph 2.

GRAPH 2



As the graph shows, there is in fact a quadratic relationship between political competition and the index. This effect is quite significant since it can move the value of the index 4 points. This further supports the theory that it is only when competition is not too weak or too strong that the right set of incentives exist for reforms to take place.

5. Conclusion

In this paper we showed that political competition is a poor predictor of judicial reforms because electorally vulnerable incumbent governments face a mixed set of incentives depending on their

expectations of the future playing field. Governments with a declining base of electoral support have long run incentives to shift from clientelistic favoritism to programmatic appeals of which judicial integrity is likely to be a popular component. But in the short run, and particularly if the failing incumbent fears that the incoming government will barricade itself in office with clientelism of its own, sitting politicians are likely to have an enormous impulse to use any lever at their disposal to win the next election. In countries still transitioning to stable democracy, short term incentives to indulge in corrupt practices to secure core voters may overwhelm longer run efficiency-enhancing incentives to build a broader base of public support through public-regarding policies.

If history and comparative analysis is a guide, political competition could eventually, on its own, secure rights for the citizens of Mexican states. But in the short run, political competition can accentuate rather than ameliorate incentives to use courts as political tools of partisan reward and punishment. Establishing judicial reform in the wake of political competition brings a balm where the body politic is already gaining in health, but it is not an irrelevant or even harmful alchemist's tincture. It is hypothetically possible, of course, that the selection of the judicial councils could ossify a sort of judicial logrolling among the appointing bodies with unknown results. Even worse, a runaway judiciary could function as a despotic and unaccountable decision maker in an otherwise democratizing polity. But there are reasons to think that, at this stage in Mexico's political development, jump starting judicial integrity could be a boon for Mexico's democracy. The judicial council, after all, is not an irreversible institutional innovation—indeed, a new political majority could hypothetically dismantle the judicial council with the same heavy handedness that it stacked the old judicial deck. Rather, it is the transparency-increasing function of the judicial council that makes it an attractive reform from the standpoint of deepening Mexico's attachment to democratic norms and practices. By gaining confidence in the judiciary and by extension, in the politicians that the judiciary helps to monitor, Mexican citizens may be sped along the path toward the happy equilibrium in which political parties choose to honor individual rights for fear of electoral reprisal.

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