

Judicial Reform as Insurance Policy: Mexico in the 1990s

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ABSTRACT

After seven decades of Mexican judicial subordination, President Ernesto Zedillo in 1994 introduced judicial reforms that increased the independence and judicial review powers of the judicial branch. The willful creation of a judiciary capable of checking the power of the president and the ruling PRI appears to counter political logic; but it makes sense as a political "insurance policy" to protect the ruling party from its rivals. PRI politicians, newly unable to control political outcomes at state and local levels and unsure if they would continue to dominate the national government in the future, opted to empower the Mexican Supreme Court as a hedge against the loss of office. This article argues that the likelihood of the reforms' producing an empowered judiciary increases as the ruling party's probability of reelection declines.

Immediately on taking office in December 1994, President Ernesto Zedillo delivered to the Mexican Congress a comprehensive judicial reform package, including dramatic institutional changes that would affect the independence and authority of the judicial branch. The Supreme Court was granted the power of judicial review (the right to declare unconstitutional laws null and void) in specifically defined circumstances and was also empowered to settle political controversies between and among the branches of government at federal, state, and local levels. As a result of the reforms, the Mexican judiciary, subordinate to the Mexican president and his Institutional Revolutionary Party (PRI) for the past 67 years, apparently was now being positioned as an independent and effective counterweight capable of checking the power of the ruling party. Indeed, in 1998, four years after the reforms took effect, Mexico's restructured Supreme Court ruled against the PRI on a key political issue, clearly demonstrating that the reforms had fundamentally altered the traditional balance of power between Mexico's executive and judicial branches.

The question that arises from these developments is, why would the Mexican president seek to create a Supreme Court capable of declaring the laws enacted under his administration unconstitutional? Furthermore, why would the president seek to create a court capable of resolving disputes over the rightful boundaries of political power between government offices held by opposition parties and those held by the ruling party?

This study argues that while Mexico's 1994 judicial reform appears puzzling on the surface, it makes sense when understood as a political "insurance policy" designed to protect a weakening ruling party operating in an increasingly insecure political arena. When political players are uncertain about the future division of power, even if they currently hold the reins of power, they may seek to increase the availability of institutional checks on political authority as a hedge against their possible loss of political dominance. Judicial reform thereby becomes a trade-off in which ruling parties are willing to accept short-term costs in exchange for long-term security.

In Mexico more specifically, increases in judicial power presented a potential short-term cost to the PRI, as the more autonomous and newly empowered court could decide cases against the interests of the ruling party during the period of the Zedillo administration. Yet the court's new powers of judicial review could also serve to protect the ruling party against the threats posed by the increasing power of its political rivals, and thereby provide protection for a ruling party that found itself unable to control political outcomes as it had in the past.

The changes in Mexico's judiciary should be understood in the context of the nature of judicial power, the differences between Mexico's common law and civil law tradition, and contemporaneous judicial reforms in Latin America. Mexico's comprehensive 1994 judicial reform package gave the judiciary's new "rules of the game," and subsequent Supreme Court rulings demonstrated the empowerment of the judicial branch. The Mexican experience, moreover, has implications for institutional reforms in other transitioning democracies. Mexico's judicial reform may owe a greater debt to the political calculations of politicians seeking to maximize their own interests than to an altruistic homage to democratic principles; but apparently its long-term consequences may be an autonomous judiciary both willing and able to serve as a true check on Mexico's separation of powers.

JUDICIAL POWER AND THE CIVIL LAW TRADITION

Judicial power is defined in this study by four interrelated concepts: impartiality, insularity, institutionalization, and jurisdiction.¹ The first two are concerned with independence (the quality of being unbiased and free from external manipulation), the latter two with authority (rightful exercise of power with claim to be obeyed). Impartiality refers to the making of judicial decisions according to the relevant laws and facts. It is the extent to which judges decide cases based on expressed rules rather than preferences of interested parties. Insularity is the degree to which judges are protected from political retribution, and is the lynchpin

that enables judges to decide cases in an impartial manner. The formal arrangements that operationalize insularity include tenure (security in office), appointment procedures (career advancement), and salary (financial compensation, which may not be diminished while in office).

Besides independence, judicial power also encompasses institutionalization and jurisdiction, the concepts required for judicial authority. Institutionalization refers to "the relationship of the courts to other parts of the political system and society" (Larkins 1996, 10) and relates to the legitimacy and stability of the judicial branch. An institutionalized judiciary is seen as the legitimate determiner of legal values. Judicial rulings are accepted and complied with by the affected parties and by those who hold power in the larger political structure.

Jurisdiction is the range of subject matter on which the courts may rule. It is a necessary component of judicial independence because it is the factor that gives independence its value. For example, if the court could make impartial decisions yet by law was permitted to make decisions on only a narrow set of issues, then the concept of independence would be meaningless in practice. The jurisdiction of an independent court envelops political, social, and economic questions. Judicial power therefore refers to insulated and impartial judges who make decisions on a wide range of issues based on expressed laws that are obeyed by political and societal interests.

Civil versus Common Law: The Role of the Judiciary

While the judiciary is the cornerstone of any legal system, it plays distinct roles in different legal traditions. In civil law traditions, such as those found in Western Europe and Latin America, the understanding is that the judiciary is to be independent—but to lack the power to declare laws unconstitutional. (See Merryman 1985 for an overview of civil law systems.) Civil law systems, whose roots developed in eighteenth-century postrevolutionary France, when society was wary of the power of judges, have sought to limit that power. In civil law systems, sovereignty, or the power of lawmaking, is delegated by the people to the legislature, and therefore only the legislature may make laws. In such a system, the judge's role is limited to the application (extended over time to the interpretation) of law. Judges may neither make law (through precedent) nor unmake it (by declaring a law null and void). A judge's decision affects only the individuals involved and does not apply to the rest of the population. Thus, while a judge may declare a law unconstitutional in a particular case, the law itself is not invalidated, and it remains in effect.

In contrast to the civil law tradition, judges in common law systems have the power of *stare decisis* ("the power and obligation of courts to

base decisions on prior decisions”), as well as the power of judicial review (the authority to declare a law or government act null and void should that law or act be found unconstitutional). Under common law, judges’ decisions are said to have “general effects,” meaning that a court’s ruling applies to all citizens and political entities in the country. The extended effect of judicial decisions under common law allows for the total invalidation of the law; the law may no longer be applied and is therefore null and void.

While traditionally civil law rejected both *stare decisis* and judicial review, modern civil legal systems have increasingly accepted these two common law principles. While precedent may not be obligatory for civil law judges, “the practice is for judges to be influenced by prior decisions” (Merryman 1985, 47). Also, “the trend toward judicial review of the constitutionality of legislation in the civil law world has been strong, particularly in this [twentieth] century” (Merryman 1985, 139). In continental Europe, such review has often been instituted with the establishment of special constitutional tribunals that are separate from the ordinary judiciary and are exclusively empowered to determine the constitutionality of legislation. The creation of constitutional tribunals in the developing world has lagged behind Europe, but the trend of increasing the judiciary’s role as a source of constitutional control in non-European civil law countries is growing.

Judicial Reform in Latin America

Judicial reform became a buzzword in Latin America during the final decade of the twentieth century, and many nascent democracies in the region engaged in dramatic constitutional reforms with the stated intent of increasing judicial power. In general, the reform packages centered on changes affecting the supreme court (and constitutional tribunals where they existed) and changes affecting judicial administration (often via the creation of specialized national judicial councils).² Since the 1990s, scholarly writings on the judiciary in Latin America have blossomed. Much of this literature has focused on the importance of establishing a strong judiciary as part of the process of democratization (Stotzky 1993; Schedler et al. 1999). Other recent academic writings document the reform experience of a particular country in the 1990s (Hammergren 1998; Popkin 2000). Yet the field of judicial reforms in the developing world still remains limited in its ability to explain why some judicial reforms are successfully implemented and others are not. This examination of the Mexican case seeks to shed light on the conditions under which reform succeeds.

THE 1994 MEXICAN JUDICIAL REFORM BILL

Although the last two decades of the twentieth century marked a period of democratic transition in Mexico, culminating in the election of the opposition candidate Vicente Fox in the 2000 presidential election, Mexico at the time of the 1994 judicial reform was perhaps best described as a "semiauthoritarian democracy."³ The Mexican Constitution of 1917, from which the past and current federal government derives its authority, formally establishes a democratic government based on a tripartite separation of powers. Historically, however, the president was the key political actor, and the judiciary was the weakest branch. President Zedillo's 1995 State of the Union Address, in which he declared, "I reiterate that the times of political naming of the Court and presidential influence over the Supreme Court have ended," is a clear and revealing assessment of the traditional relationship between the executive and judiciary in Mexico (Zedillo 1995).⁴

The 1994 reforms altered the composition of the Supreme Court and included dramatic constitutional and statutory changes that redefined the independence of the judicial branch and the powers and limitations of the Supreme Court. President Zedillo stated, "while changes are not wrought overnight . . . [t]he Constitutional Reform promulgated last December creates the basis for an independent Federal Judiciary, an impartial power, of transparent operations, growing professionalism, and better capacity to fulfill its responsibilities" (Zedillo 1995). Were these latest changes truly substantive? Or did they prove to be purely cosmetic, as some critics have claimed?

Institutional Changes

The 1994 judicial reform bill replaced the entire membership of the Supreme Court and restructured the federal judiciary, creating the Federal Judicial Council (CFJ) to oversee judicial administration and to foster the independence of judges. The reforms also sought to develop a new political understanding of the Supreme Court, codified in the explicit definition of its new powers as a "constitutional court."

The reform reduced the Supreme Court from 26 to 11 justices, thereby returning it to the number originally established by the 1917 Constitution. Before the 1994 reform bill, the president nominated one candidate to fill a vacant seat on the court, and Senate confirmation of the nominee required the approval of a simple majority of senators. Now the Senate selects one candidate from a list of three names sent by the president, and the confirmation of this nominee requires the approval of two-thirds of the Senate. The prerequisites for nominating justices are now more rigorous, and nominees must possess more

extensive professional experience. Prospective justices must also face Senate interviews before confirmation and cannot have held a major political post in the year preceding their nomination. Justices' life tenure was replaced by 15-year, staggered terms.

Judicial administration had previously been the Supreme Court's responsibility, but the 1994 reform created the CFJ. The first judicial council was established in France in 1946, and the concept spread throughout Europe in the second half of the twentieth century. The membership and functions of these councils vary across countries. Council composition may include judicial representatives, members of the three branches of government, or some mixture of these, along with lawyers and academics. A council's range of responsibilities may include the naming of judges (all lower-level judges in general and supreme court justices less frequently); the establishment of a judicial career path; the territorial division of the country into judgeships, along with their number and specializations; discipline, suspension, and firing of judges; preparation of the judiciary's budget; the establishment of internal regulations, such as working conditions and business hours; the collection of data to monitor and evaluate the quality of judicial services; and the publication of judicial decisions. Judicial councils were established throughout Latin America in the 1990s.⁵ While Latin America's judicial councils vary in their functions, in general they are charged with the selection of lower-level judges, the establishment of judicial career paths, and the preparation of the judicial budget.

Mexico's CFJ is a seven-member body composed of the country's chief justice, one judge, two district magistrates, two members chosen by the Senate, and one member appointed by the president. They serve four-year, nonrenewable terms. The CFJ is vested with key responsibilities over judicial careers, including the appointment, promotion, and discipline of all judges below the supreme court level. The CFJ's powers also include the establishment of territorial divisions and the number of circuits; as a result, the CFJ determines the total number of judges. Furthermore, the council is charged with the professionalization of the national judiciary and the establishment of prerequisites for judicial careers (university curriculum and standards for advancement based on experience and merit evaluations). Responsibility for preparing the judicial branch's budget was also transferred from the Supreme Court to the council.⁶ The CFJ submits its budget to the president, who then refers it to Congress as part of the national budget proposal. While the Supreme Court does retain some administrative functions, the CFJ is now the main body charged with judicial administration, and the court is primarily responsible for issuing rulings to resolve disputes and to determine the constitutionality of laws.⁷

The most significant changes brought about by Mexico's 1994 judicial reform bill involve the political understanding surrounding the Supreme

Court's role as a check on the separation of powers. This change is embodied in the court's right to resolve "constitutional controversies" and to determine the "unconstitutionality of laws."⁸ Supreme Court decisions in these two areas have the potential to have "general effects"; in other words, they may declare government acts (in the first instance) or laws (in the second) as null and void. Before the reform, the Mexican legal system considered only cases of *amparo*, or protection of individual guarantees. Under *amparo*, a court's ruling has effect only for the individual bringing the case, not for the entire population. According to Chief Justice Juventino Castro y Castro, "There is no such thing as *amparo* against unconstitutional laws; there is only *amparo* against the application of such laws to a specific case which has been raised by an individual who has been diligent enough to request it from the Federal Judiciary" (Quoted in Estrada Samano 1995, 44). Thus, by establishing the general effects of Supreme Court decisions in cases involving "constitutional controversies" or "unconstitutionality of laws," Mexico's 1994 judicial reform granted the Supreme Court the right to act as a constitutional court capable of controlling the constitutionality of government actions and laws.

"Constitutional controversies" refers to the Supreme Court's right to resolve conflicts between public entities in which one entity alleges the other's infringement on a mutual jurisdiction. These conflicts include disputes between the president and Congress, between the federal government and states or cities, between two states, between political organs within states, and between states and cities. Any of these entities may petition the court to hear its case. Although the Supreme Court did previously enjoy the ability to decide such controversies, its decisions did not have any affect beyond the immediate parties involved. Now, the Supreme Court may void an act or law if it is found to violate the jurisdiction of another official public entity.

The explicit inclusion of cities on the list of entities with legal standing to request review is another innovation. In the past, the status of cities under this clause was ambiguous, and varied depending on the prevailing political winds. With formal inclusion in the constitutional controversies clause, cities now possess a clearly defined right to seek legal recourse against presumed unconstitutional acts contrary to their interests.

The 1994 reform also granted the Mexican Supreme Court a second, entirely new function as a constitutional court via the "unconstitutionality of laws" clause. Mexico's Supreme Court may now invalidate laws passed by Congress, state legislatures, and Mexico City's legislative assembly. Before the reform, the court could grant an individual protection if it found a law to be unconstitutional; but now laws found to be unconstitutional under this clause can be declared null and void. The court may examine the constitutional validity of a law if one-third of the members of the legislature that passed the law petition the court to do

so. In addition to legislative petitions, under the unconstitutional laws clause, the Senate may request the court to review the constitutionality of treaties, and the attorney general may request Supreme Court examination of any law passed by national, state, or local legislatures.⁹

Both the constitutional controversies and the unconstitutionality of laws clauses enable the Supreme Court to limit governmental authority and define political boundaries, thereby increasing the importance of the judiciary as a mechanism for constitutional control. However, the court's new power to check unconstitutional government action is severely limited in several ways. First, the agreement of a supermajority of justices (8 out of 11, or 72 percent) is required to invalidate an unconstitutional act or law under either of the two constitutional control clauses.¹⁰ With respect to constitutional controversies, furthermore, the court's ruling will have general effects only when a higher body challenges a lower-level one; for example, when a federal body challenges a state or municipal one. Should a lower body challenge a higher body and win with the approval of at least 8 justices, the court ruling will apply only to the lower body involved in that particular case, as was the norm before the reforms. Likewise, the supermajority stipulation applies to unconstitutional laws; the Supreme Court can declare a law null and void only when 8 out of 11 justices agree on the unconstitutionality of the law in question. Thus, even if a majority of justices (6 or 7) on the court were to declare a law in violation of an individual's constitutional rights, the law would continue in effect.

The 1994 reform placed two additional restrictions on the court's power to invalidate laws via the unconstitutional laws clause. First, members of any legislature who desire to question the constitutionality of a law passed by their assembly have only 30 days from the publication of the law to file a petition with the court. Second, the court is explicitly prohibited from using the unconstitutionality of laws clause to determine the constitutionality of laws with respect to "electoral matters." The 1994 judicial reform specifically states that the court cannot decide whether electoral laws are constitutional. The opposition therefore would be unable to challenge electoral rules constructed to provide advantages to the PRI. (For example, such rules allocated 74 percent of the seats in the Senate to the PRI even though it had received only 48 percent of the vote).¹¹ Mexico's 1996 electoral reform, passed two years after Mexico's judicial reform was promulgated, partly removed this limitation by allowing for electoral cases to be taken under the unconstitutional laws clause.¹²

Analysis

What have been the effects of this reform package on the Mexican judiciary? This question can be answered by examining changes to the judi-

ciary's neutrality (impartiality and insulation) and authority (institutionalization and jurisdiction).

On the whole, the reforms improve the neutrality of the judicial branch. They promote the development of judicial impartiality; and in particular, the new appointment procedures decrease the opportunities for partisan selection of justices and judges. At the Supreme Court level, the requirement of a two-thirds majority rather than a simple majority for Senate confirmation of nominees makes it difficult for any one party singlehandedly to choose its own candidate, and they promote the selection of nonpartisan justices.

The weakened insulation of Supreme Court justices, however, is cause for concern. The decrease in the security of office for Supreme Court justices from life tenure to 15-year terms undermines a key safeguard of justices' impartiality. While life tenure was the norm in the Mexican judicial system before the reform, it had little value, because justices saw the court as a stepping-stone to a better political post, not an end in itself. Thus the structure of the incentive system discouraged impartial rulings, as judges were rewarded with better job placement in exchange for decisions amenable to the ruling party. Before the 1994 reform, justices remained on the court about 10 years on average; only 20 percent of justices served for longer periods. Justices chosen from outside the judicial branch were particularly likely to abandon the court for more attractive political positions (Cossío 1998a). The new 15-year limit institutionalizes this problem because younger justices will be compelled to retire from the court at an age when they may still be in the job market and seeking career advancement.

On the other hand, two nonstructural variables have significant implications for the independence of the Supreme Court in Mexico and must be addressed in any analysis of Mexico's high court. The first is the country's changing domestic political environment. The demise of one-party politics alters the incentive structure for Supreme Court justices (Domingo 2000). A justice can no longer be certain that a future president, at a time when the justice might seek another political office, will belong to a particular party. Similarly, rulings that appear partial to a particular party and that do not appear to represent an impartial decision based on the law and the facts could eventually cost a Supreme Court justice political standing. Because of this contingency, the best course of action for a justice may no longer be to issue legal rulings in the hope of currying favor with the government.

The second important nonstructural change is the selection of justices who are dedicated to a career in the judiciary. The naming of justices who view a seat on the Supreme Court as the pinnacle of their career rather than as a strategic move toward a coveted political office provides justices with an incentive to foster the prestige of the Mexican Supreme Court.

With respect to lower-level federal judges, the creation of the CFJ furthers both impartiality and insulation. Before the reform, the selection and career advancement of lower-level judges was in the hands of the Supreme Court. Particularly since 1980, when the federal judiciary began to expand and the number of judicial appointments per year increased dramatically, the selection of judges was marred by corruption and the importance of personal ties.¹³ As a result of the reform, a non-partisan council determines the selection and promotion of judges. The council's mixed membership, a majority of which is chosen from the judicial branch, makes it difficult for any external influence to manipulate the council's decisions for political gain.¹⁴

The CFJ's use of established merit evaluations to determine career advancement means that a judge's prospects will depend on a demonstrated competency and the use of sound legal reasoning to decide cases, rather than on connections or political ties. The CFJ's responsibility for the discipline and life tenure ratification of lower-level judges also provides for improved judicial insulation, thereby allowing judges to decide cases contrary to the wishes of those with political power or social influence without fear of retribution. As before, constitutional provisions continue to prohibit decreasing judicial salaries while a judge holds office. (It must be noted, however, that the power to raise salaries may still be used to wield influence over judges, particularly in an inflationary economy in which raises do not keep up with inflation.)

Besides neutrality, an evaluation of judicial reform must also analyze changes to judicial authority. How do the changes of 1994 affect the legitimacy of the judiciary and its position in regard to the other branches of government? While respect for the judicial branch will not take hold overnight, the reform package does include changes necessary to induce it to develop. The increasing regard for professionalization and greater experience requirements for advancement should lead to a more qualified cadre of judges. As for Supreme Court justices, more demanding credentials required of nominees and public scrutiny of their qualifications during Senate hearings will favor candidates with greater expertise.

The creation of a special council to oversee the judiciary's administrative functions is also a positive step in the development of judicial autonomy. The CFJ has the potential to promote greater efficiency within the judiciary and frees the Supreme Court to concentrate its resources solely on the resolution of constitutional issues and socially important legal concerns. The establishment of a judicial career path and specialized curriculum under the CFJ should result in better-trained judges who provide consistent and higher-quality decisions. At the same time, one important weakness with respect to the CFJ concerns its control over the budget. The CFJ prepares the budget and thereby oversees the setting of priorities and allocation of resources within the judicial

branch; but Congress is not bound to appropriate the amount of funding the CFJ requests. A better method to guarantee judicial funding would be to specify its amount more explicitly, such as a fixed percentage of gross domestic product.

Jurisdictional changes may perhaps be the most significant feature of the reform. The Mexican Supreme Court's explicit empowerment to act as a constitutional court is a fundamental change in Mexico's separation of powers. Via the constitutional controversies and unconstitutional laws clauses, the Supreme Court has the potential to define political boundaries and declare unconstitutional laws null and void. Nevertheless, the requirement of a supermajority to achieve a ruling with general effects means that the court's ability to overturn government acts and laws is still discouraged rather than encouraged. Yet this constraint does not preclude such an outcome. On the other hand, if an act or law continues to have legal authority even though seven Supreme Court justices find that it violates constitutional principles, this outcome may undermine respect for judicial authority.

The 30-day limit for members of the legislature to petition the Supreme Court to examine the constitutionality of a law is a very short time, both to prepare a legal challenge and simply to discover the law's effects. This time constraint makes it impossible to challenge laws that result in unfair consequences over time. More important, this time limit effectively favors the PRI, because all laws passed during the period of PRI dominance before the 1994 judicial reform were excluded from challenges of unconstitutionality because they were, by definition, outside the 30-day time period.¹⁵

The Supreme Court's power also depends on the its willingness to rule on issues it may have avoided addressing in the past. In this regard, the reformed court has greatly expanded the range of its jurisdictional powers. The court has been ruling on a wide range of issues that are hotly contested and highly controversial—issues that previously would have been decided behind closed doors by the ruling party elite. The justices have ruled on political matters, including boundaries between the president and Congress and the president and the Mexico City mayor. The court has also ruled on electoral laws, the naming of state electoral tribunals, and illicit campaign financing. Indeed, some of the Supreme Court justices who took office after the 1994 reforms publicly questioned the limitations on their right to rule on electoral issues—even before the 1996 electoral reform allowed them to do so.¹⁶ The high court has also ruled on a broad array of economic and social issues, including allowing the capitalization of interest on bank debt; the unconstitutionality of the luxury tax; the right of entrepreneurs to refuse membership in government-sponsored chambers of commerce; the federal government's right to audit the national university; the fining of the

state-owned oil company, PEMEX, for a spill on the Gulf coast; the denial of extradition to the United States of alleged criminals who could face the death penalty (capital punishment is illegal in Mexico); the right of living individuals to sell their organs for transplants; and the decriminalization of abortion in cases of rape or severe fetal deformity.

On balance, the new institutional rules laid the groundwork for the development of an independent judiciary with the potential to play an active role in Mexico's separation of powers. A look at the specifics of some of the post-1994 decisions provides concrete evidence that Mexico's new Supreme Court is both willing and able to rule against the ruling party and the president on extremely salient political issues.

Postreform Court Rulings Opposing the PRI and the President

The first exercise of the court's new judicial review powers against the PRI occurred in 1998, only four years after Mexico's judicial reform, when the Supreme Court declared unconstitutional an electoral law intended to maintain PRI dominance in the state of Quintana Roo.¹⁷

PRI legislators, realizing that they would lose control over the Quintana Roo state legislature in the next election, enacted a new state electoral law, known as the governability clause, that would have awarded a majority of legislative seats to the plurality vote winner. Because the PRI expected to garner the largest share of the vote but still under 40 percent, the clause would have guaranteed the PRI's continued unilateral control over the Quintana Roo legislature even though the party polled less than a majority of the vote. In response to the passage of the governability clause, legislators from the opposition Party of the Democratic Revolution (PRD) filed an unconstitutional laws petition with the Supreme Court in August 1998 to challenge the legality of the state's new electoral code. In a unanimous ruling, all 11 justices declared the clause to be unconstitutional. As a result, the law was struck from the state's electoral code, and the PRI's monopoly over political power in Quintana Roo was broken.¹⁸

Not only has the court been willing to challenge the PRI at the state level, but the justices have also used their newly acquired judicial review powers to rule against the political elite at the federal level, including the previously sacrosanct presidency. The first challenge to be filed against a Mexican president under the judiciary's new constitutional control powers was brought by the federal congress against Zedillo under constitutional controversies in 1999. At that time, members of Congress from the National Action Party (PAN) and the PRD were attempting to conduct an investigation of alleged illicit bank financing of PRI candidates during the 1994 election, including the fund-

ing of Zedillo's presidential campaign. They were stymied by a recalcitrant executive branch.¹⁹ PAN and PRD legislators petitioned the court to determine whether the president was obligated to deliver the requested secret banking data to Congress. On August 25, 2000, in another unanimous decision, the justices ordered Zedillo to remand the relevant documents to Congress within 30 days. Zedillo, now at the end of his *sexenio*, complied with the ruling; the secretary of the treasury and the head of the National Banking Commission delivered the requested files on time. In this case it may be argued that a lame duck president was too weak to ward off judicial encroachment. But the Supreme Court has been just as able to counter the interests of Vicente Fox, even at the beginning of his presidential term.

The first major judicial challenge faced by Fox began with a dispute between the PAN president and the PRD mayor of Mexico City, Andrés Manuel López Obrador, over the implementation of daylight saving time. Annual presidential decrees had established daylight saving time in Mexico since 1996. The executive branch justified the time change by arguing that the additional hour of daylight saved hundreds of millions of pesos in energy costs and also brought Mexico in line with the United States, the country's most important economic partner. López Obrador, stating that daylight saving disrupted people's biological clocks, announced in March 2001 that Mexico City would not implement the time change and used constitutional controversies to challenge the president's right to do so. In an 8-2 decision (only 10 of the 11 justices voted in this ruling) on April 6, the justices ruled against the mayor, claiming that the setting of time was a federal prerogative. However, the decision left unresolved the question of which federal branch was legally empowered to determine the Mexican timetable. In a second ruling on this issue, on September 4, 2001, the court unanimously decided against the Mexican president, with all 11 justices agreeing that the setting of the clocks was a congressional responsibility. Congress did pass daylight saving legislation the following February, although its version of the law implemented the time change for seven months rather than the six months originally established by presidential decree.

Yet another Supreme Court ruling worth examining declared unconstitutional a presidential decree allowing for private participation in the provision of electrical energy for public use. President Fox had made reforming Mexico's energy sector a key priority of his administration. His Public Service Electric Energy Law, decreed on May 22, 2001, would have allowed large corporations producing electricity for their own use to sell any surplus they generated to the state for redistribution to the general public. However, Article 28 of the Mexican constitution reserves energy as a state monopoly, with the state solely responsible for the generation, transmission, and distribution of electricity. In addition,

energy privatization is strongly opposed by both the PRD and elements of the PRI, and it was congressional members of these two parties who filed a constitutional controversies petition challenging the legality of the decree law. In an 8–3 ruling on April 25, 2002, the Supreme Court held that the presidential decree was unconstitutional, thereby ruling out the possibility that the Federal Electricity Commission could purchase surplus from private providers and dealing a blow to one of the top issues on Fox's agenda.

The court's decisions, as well as the broad range of issues on which it has ruled, provide evidence of a fundamentally restructured relationship between Mexico's traditional wielders of political power and its judicial branch. With rulings against the PRI as well as against PRI and PAN presidents, Mexico's postreform Supreme Court has clearly demonstrated both an ability and a willingness to enter the political fray. Yet the paradox of a ruling party willfully engaging in meaningful judicial reform has a rationale: judicial empowerment served the interests of a weakening ruling party in an increasingly insecure political environment.

A THEORETICAL ARGUMENT TO EXPLAIN JUDICIAL REFORM

Institutions provide the "rules of the game"; they define the procedures that govern human social, economic, and political behavior. They serve as the mechanisms that constrain the initiation, implementation, and sustainability of policy choices and as the mechanisms that structure political interaction. They thereby establish opportunities for and place constraints on political leaders. Those political actors who have the power to restructure political institutions will seek to do so if such a course of action enables them to replace existing institutions with those that better serve their interests. These ideas underlie the argument to explain judicial reform presented here.

The argument begins by determining the preferences and capabilities of the political actors who oversee judicial changes. With respect to preferences, political parties have interests that are specific to their position in the balance of power. A ruling party, defined here as the party that controls the apparatus of government, will seek to maintain or create institutional structures that minimize or eliminate constraints on its ability to exercise political authority. The opposition, conversely, seeks to check the ruling party's ability to wield political power. The political interests of the ruling and opposition parties depend on the roles they occupy, not ideology or interests.

Capability refers to the relative bargaining power of political parties. It determines whether a ruling party is able to enact changes on its own or must build a coalition to implement reform. In the former scenario, insti-

tutional reform will reflect solely the interests of the ruling party; in the latter, the ruling party will have to make compromises in order to garner the support necessary to pass reforms, but will retain the advantage of setting the agenda and defining the set of possible outcomes.

While it is obvious that political actors take actions to increase their current political power, it must be emphasized that they also try to protect their future interests. The inclusion of future interests in a party's cost-benefit calculation may have significant consequences for the outcome of reform, particularly when uncertainty exists about the party's future standing in the domestic political arena. Should the ruling party foresee that it may no longer dominate a political system in which it has previously exercised arbitrary powers, then it is in the ruling party's interest to make sure that those who may come to power in the future are unable to change arbitrarily the rules of the political game in ways detrimental to the former ruling party's political position. In such a scenario, it makes sense for the ruling party to try to establish institutional limits on power, either by directly constraining the use of power or by creating or strengthening political counterweights.

Applying this argument to the specific case of judicial reform, we may assume that a ruling party will generally prefer a judiciary that is less rather than more capable of limiting the government's ability to achieve its interests. This is because a ruling party prefers to wield political power without having to contend with judicial constraints on its actions. Assuming that politicians are self-interested and that they seek to maximize their power, the ruling party would not be expected willfully to initiate reforms to increase the judiciary's potential to limit government authority. On the other hand, the opposition—by definition, those who do not hold power—will want to increase the independence of the judiciary in order to check presidential and legislative power (because they do not control these), as well as to protect the political rights of the opposition (themselves). Ruling parties prefer constraints on judicial independence, while opposition parties prefer to increase judicial neutrality and authority.

The distribution of power not only determines the political players' interests; it also determines the power to achieve those interests. If the ruling party can singlehandedly implement reforms and is considering only the current time period, reforms will not include increases in the judiciary's ability to limit government actions. If a coalition is required to pass judicial reform, then the game becomes how to provide the opposition with incentives so as to obtain the number of votes necessary to approve the reform. Thus, a constitutional design favoring the development of a neutral judiciary with broad authority is more likely where at least one opposition party exists whose vote is necessary to pass the reform.

When political actors also implement reform with an eye to the future, a ruling party that expects to remain in power should not be expected to increase the independence and authority of the judicial branch.²⁰ On the other hand, a ruling party whose probability of reelection is low or decreasing may see such a change as worthwhile. A ruling party with an uncertain future may decide to grant the supreme court independence and the power of judicial review in order to serve as a hedge against possible downturns in the party's future political position. Granting the supreme court the right to declare political acts or national laws null and void reduces the costs a ruling party would face if it were to end up as an opposition party. In particular, a ruling party that has wielded arbitrary power in the past may seek to enable the court to limit the ability of future ruling parties to do likewise. In effect, a ruling party, unsure if it will control political power in the future, may seek to protect the political power of those parties that will not.

Thus judicial reform may operate as a political insurance policy. Much like an insurance policy, moreover, such reform implies up-front costs in exchange for future protection. In the current period, the newly empowered supreme court may challenge the very government that oversaw the increases in judicial power. While these increases imply potential costs to the ruling political leaders in the short run, they may ultimately serve these actors' longterm interests should these leaders eventually lose their position of political dominance.

APPLYING THE ARGUMENT TO MEXICO'S 1994 JUDICIAL REFORM

By the early 1990s, the Mexican president and ruling party had an interest in creating institutional insurance mechanisms to protect themselves, given the likelihood that their power would continue to diminish. Zedillo initiated the reform process, defined the parameters of the debate, and specifically tailored the Supreme Court's two new powers of judicial review to protect the ruling party where it perceived itself to be the most vulnerable. But the PRI did not have the congressional votes necessary to alter the country's constitution unilaterally, and therefore it was forced to seek the support of the PAN. As to be expected of an opposition party, the PAN demanded the establishment of a judiciary stronger than that which Zedillo had originally proposed. The combination of an insecure ruling party seeking insurance and an opposition party pushing for greater judicial empowerment determined the final form of the 1994 judicial reform package.

Domestic Political Uncertainty

As late as the end of Miguel de la Madrid's presidency (1982), guests at a PRI dinner party were discussing their political plans for the PRI's next four *sexenios* in power (Solis 1994, A1). The PRI had dominated Mexican politics since 1929, making Mexico's one of the longest ruling single-party governments in the world. The Mexican president was the leader of both the country and the ruling party. As a result, Mexican presidents enjoyed immense power. The PRI was built on *camarillas* (networks), with the president's network dominating the party during his term and dictating policy. Thus, Mexican policy during the period of PRI hegemony was both "presidential" and "of the party."

Traditionally, the PRI had used economic growth to legitimate its rule and to obtain votes. Where the PRI could not achieve victory by legitimate means, it resorted to electoral manipulation. By the mid-1990s, both of these strategies were under fire. A debt crisis was undermining PRI hegemony and fundamentally altering Mexico's domestic political arena. Economic stagnation was further weakening the PRI's hold on power, and the presence of international observers to monitor elections reduced the party's ability to retain power through electoral fraud. The opposition, meanwhile, made headway in opening up the country's political playing field. The two most important opposition parties by the mid-1990s were the PAN on the right of the political spectrum and the left-leaning PRD, which began as a coalition of minor parties in the 1988 presidential election.

Mexican electoral trends from 1970 to 1994 are demonstrated in table 1, which shows the decrease in the (official) vote received by the PRI presidential candidate over the 25 years, from 93.6 percent in 1976 to 48.7 percent in 1994. In the June 1994 presidential election, opposition parties garnered more than 50 percent of the electorate's votes. The PAN chairman, following the party's strong showing, stated that the PAN was establishing as its goals "a majority in Congress in the 1997 elections and then the presidency in the year 2000" (Romero 1995, 12). After the 1994 results, the PRI had to take such election bravado seriously.

"In the new disorder of Mexican politics, the nation's ruling party is no longer the reassuring but undemocratic absolute," wrote the *Wall Street Journal's* correspondent in Mexico one month after the election that brought President Zedillo to power (Solis 1994, A1). With respect to congressional representation, the opposition made only token advances in membership until 1994, when the proportion of seats held by opposition parties began to have important consequences. In the 1994 congressional election, the PRI received a two-thirds majority in the Senate but retained only a simple majority in the Chamber of Deputies. Thus, for the first time, the PRI no longer possessed the nec-

Table 1. Mexican Presidential Election Results, 1970–1994
(percent of vote)

	PRI	PAN	PRD/FDN ^a	Other
1970	83.3	13.9	—	1.4
1976	93.6	—	—	1.2
1982	71.0	15.7	—	9.4
1988	50.3	17.0	31.1	1.4
1994	48.7	25.9	16.6	6.0

^aThe National Democratic Front (FDN) was an electoral coalition uniting small left-wing parties behind the PRD's candidate in 1988 and 1994.

essary two-thirds majority in the lower house required to approve changes to Mexico's constitution. These electoral changes demonstrate that by 1994, after nearly seven decades in power, the PRI could no longer unequivocally predict that it would win Mexico's presidential election in the year 2000 or continue to maintain its control of Congress.

Paralleling changes at the federal level, political power at the state and local levels in Mexico had also become increasingly diversified by 1994. The PRI was contending with opposition strongholds in the north (the PAN) and the south (the PRD) and with weak electoral support in Mexico City. Members of the opposition had successfully competed against the PRI for governorships and seats in state legislatures, for political offices in the capital city, and for positions at the local level. The first non-PRI governor, a member of the PAN, came to power in Baja California in 1988, and two more PAN governors were elected in 1994. In the 1994 election, "The PRI was seen for the first time as vulnerable to growing voter discontent and a new element, uncertainty, entered the electoral scene" (Serrano 1994, 12).

This trend of increasing opposition control of political office and concomitant loss of the PRI's control over those offices continued with the elections of 1997 and 2000. In the July 1997 congressional election, the PRI lost its majority in the Chamber of Deputies. The mayoralty of Mexico City, decided by popular election rather than appointment for the first time in 1997, was won by the PRD's candidate, Cuauhtémoc Cárdenas. In addition, eight governorships were held by opposition parties, including seven by the PAN and one by the PRD, and the opposition also controlled several state legislatures (see Instituto Nacional de Geografía e Informática 1999, 623). Opposition parties gained control of one-third of all municipalities (Blum 1997, 28–42). In 2000, the PRI lost the presidency to the PAN candidate, Vicente Fox, heralding a fundamental change in the Mexican political system.

New Judicial Review Powers

The Supreme Court's two new constitutional control clauses operated in the specific areas where the ruling party faced significant threats from its political rivals. Both constitutional controversies and the unconstitutionality of laws provisions would enable the weakened ruling party to challenge laws put in place against the PRI's interests by opposition-controlled state and local governments. Thus, via the use of the court's new constitutional control clauses, the PRI could protect itself against immediate current losses of political power at the state and local levels and against the further deterioration of the ruling party's political position in midterm elections during the Zedillo *sexenio* and beyond. Furthermore, given the possibility that the PRI could lose the presidential election in 2000, the reformed court could provide a means of challenging Mexico's next ruling party.

Thus, while the decision by the ruling president and party to grant the Supreme Court the attributes of a constitutional court—and thereby check the power of the very government that initiated and approved judicial reform—appears illogical on the surface, it makes sense when regarded as an insurance policy sought by a ruling party that could no longer guarantee its monopoly on political power. With an insurance policy, the ruling party was willing to accept costs in the immediate period (the costs associated with an independent judiciary ruling against the interests of the PRI during the Zedillo administration) as a security hedge against the possibility of paying higher costs later (the costs associated with an opposition party coming to power and wielding unchecked authority contrary to the interests of the PRI in the future). The PRI could have embarked on a reform to grant much more power to the Supreme Court; for example, it could have granted the court expansive judicial review powers or adopted the principle of majority rule for declarations of unconstitutionality to take effect. But the PRI did not choose either of these courses of action. The party was not seeking a more powerful Supreme Court as an end in itself; rather, the PRI's goal was to balance the desire to limit the court's ability to challenge the ruling party in the current period with the desire to protect itself in the future should the opposition dethrone the PRI from its position of political dominance.

It should also be mentioned that the PRI was never a monolithic entity, and indeed, not all factions within the PRI were prepared to tolerate a real democratic opening in Mexico. PRI hardliners opposed relinquishing power, while "softliners" accepted the possible loss of PRI political control. Zedillo's network favored continuing with Mexico's democratic liberalization, even if it meant the loss of political power. As Zedillo and his network within the PRI accepted the potential loss of

power, they had a real incentive to seek judicial empowerment, and they had the political power to carry it out.

Additional Players in the Reform Decision

While Mexico's 1994 judicial reform was dictated from within the presidential palace, both domestic and international actors have been involved with certain aspects of it, although in general their role has been limited. Recognizing that judicial changes were imminent, several Supreme Court justices prepared their own judicial reform proposal and submitted it to the executive (Cossío 1998b). According to José Ramón Cossío, a constitutional specialist involved in the drafting of the court's judicial proposal, the court's reform would have emboldened it with extensive powers of judicial review (Cossío 1998b). The president's judicial reform initiative, however, was quite distinct from that of the Supreme Court; for example, firing the entire bench and granting the court much more narrowly defined powers of judicial review than those the court itself suggested. This demonstrates the court's limited influence on the 1994 reform package (Cossío 1998b).

International financial institutions, particularly the World Bank, have encouraged developing countries to engage in judicial reform as a way to promote investor confidence. The World Bank has provided judicial reform loans to several Latin American countries, but Mexico in the 1990s was not among the recipients. The most significant international assistance for judicial reform received by Mexico in the mid-1990s was small-scale funding from the United States Aid for International Development (USAID).²¹

Civil society organizations have also played a role in specific areas of justice reform in Mexico (for example, criminal and penal reforms), but not a major role in the empowerment of the Supreme Court. According to Rafael Harel, vice president of Mexico's Commission on the Defense and Promotion of Human Rights, neither civil society nor human rights groups were influential or actively involved in the design of the 1994 reform (Harel 1998). Instead, the initiation and development of Mexico's judicial reforms was a presidential prerogative.

While the parameters of Mexico's judicial reform package were defined by the Zedillo administration, the president's party could not singlehandedly approve constitutional changes to the judiciary. The Mexican constitution may be changed only with the approval of two-thirds of the representatives from each house of Congress. While the PRI had two-thirds of the seats in the Senate, the party lacked this amount in the Chamber of Deputies, and Zedillo was compelled to court the PAN in order to pass the judicial reform bill. As a result, the PAN was well placed at the bargaining table.

In exchange for its support of the PRI's reform proposal, the PAN was able to extract particular benefits from the PRI with respect to judicial reform and to modify the reform proposal to its advantage. First, the reform established a more conservative Supreme Court, and the sympathies of at least four of the new justices, including the chief justice, lay with the PAN (Begn  1996). Second, the position of attorney general, the individual responsible for the implementation of judicial reform, was given to a member of the PAN. Third, Zedillo's original proposal granted the president the power to appoint two members of the Federal Judicial Council. During the bargaining in Congress, however, the number of appointees the president could name was lowered from two to one, thereby decreasing the executive's (in other words, at that time, the PRI's) weight in the council.

The PAN's position as an opposition party dictated its interest in increasing the Supreme Court's ability to challenge the ruling party. This clearly accords with PAN pressure to modify the PRI proposal in ways that favored the strengthening of the judiciary as a viable check on political power. The most significant modification of Zedillo's original proposal achieved by the PAN was the decrease in the number of legislators required to petition the Supreme Court under the reform's unconstitutionality of laws clause. Zedillo's original proposal had placed this requirement at 45 percent of the members of a legislature, but the reform bill was approved in Congress only after that percentage had been lowered to 33 percent. The reduced percentage greatly enhanced the PAN's ability to challenge decisions made by the PRI. At that time the PAN held one-third of the seats in many northern state legislatures. It could also obtain this amount in Congress and in Mexico City's Legislative Assembly by joining with other opposition parties. Furthermore, with its strong prospects for 1997 congressional elections, the PAN at that time was well placed to capitalize on the potential benefits of this change.

The most prominent political criticism of Mexico's 1994 reform proposal came from the PRD.²² Given that the PRD was also an opposition party, the argument of this study would predict that the PRD should support changes to increase judicial independence and improve the court's role in the separation of powers. Yet the PRD opposed the PRI-sponsored reform. This apparent paradox can be explained by examining the PRD's perspective more deeply. From the PRD's vantage point, the PRI's provision of limited judicial reform was intended to preserve the PRI's hold on power. This objective, however, undermined the public's perception of the need to engage in a more extensive overhaul of the judicial system, and therefore stymied attempts to undertake more profound political reforms (Penalosa 1996). Thus, as expected of an opposition party, the PRD did not oppose strengthening the judiciary in principle, but it did oppose this particular reform package for not fur-

ther empowering the Supreme Court. A PRI-PAN congressional coalition was nevertheless able to pass judicial reform without the support of the PRD, and the latter was therefore unable to obstruct or influence Mexico's 1994 judicial reform.

CONCLUSIONS

Mexico's president, leader of the very same ruling party that oversaw the development of a Supreme Court that had refrained from challenging the party's authority over the course of nearly seven decades, willfully undertook institutional reforms in 1994 to establish a judiciary with the potential to constrain the PRI's own political power. Politicians from the ruling party, increasingly unable to control political outcomes at the state and local levels and unsure if they would maintain their dominance of the national government in the future, granted increased independence and the power of judicial review to the Supreme Court. While this appears to contradict the traditional maxim that politicians prefer to increase their political power, the PRI's decision to empower the court makes sense as an "insurance policy" in an uncertain domestic political arena.

Clearly, Zedillo could have granted the Mexican Supreme Court even more extensive judicial review powers but did not, because a more powerful judiciary was not the ultimate goal. Instead, the court's two new constitutional control powers were specifically designed to counter the most salient threats poised by the increasing political power of the PRI's rivals. Specifically, both the constitutional controversies and unconstitutional laws clauses would serve to protect the PRI where it had suffered losses of political power to opposition parties and feared that it would continue to do so. While the PRI might not have been able to prevent decisions and actions taken against its interests by opposition-controlled political offices, at least it could challenge these actions via an autonomous and empowered judiciary.

The constitutional controversies clause enabled the court to serve as an independent arbiter in disputes between government entities, a solution for a ruling party whose loss of power, particularly at the state and local level, had left it no longer capable of quietly and unilaterally resolving issues from behind closed doors. Unconstitutional laws clauses allowed the PRI to use the court to check the arbitrary exercise of authority by executives and legislatures, both in state and national governments, should the PRI become the opposition at either of these levels. Thus, for the PRI, a Supreme Court with the power to invalidate laws and to decide boundary disputes over political power reduced the risks associated with the potential loss of the PRI's dominant political position. For the PAN, the other party that cooperated to enact Mexico's package of judicial changes, the reform increased the number of insti-

tutional mechanisms available for challenging the PRI in the current period and the future ruling party, should the PAN have remained the opposition. Because PAN support was necessary to pass the reforms, furthermore, the PAN could extract specific benefits and modify the reform package to augment the viability of the court as a check on current political authority.

Mexico's experience with judicial reform demonstrates that institutional reform in one-party-dominant states may result in the creation of independent and potentially powerful institutions, institutions that can serve as effective counterweights to established political power. Precisely because such reform entails potential costs to the dominant party, however, a ruling party attempts to postpone it for as long as possible, implementing the reform as closely as possible to the time when it might begin to use the reform as protection. This strategy implies that democracy-building institutional reform and the likelihood of retaining office should share an inverse relationship. As the probability of retaining control over political office decreases, motivation for carrying out institutional reform to place constraints on political power increases. In the Mexican case, the result has been a fundamental alteration in the balance of power between the executive and judicial branches and the creation of a Supreme Court both willing and able to enter the political fray.

NOTES

1. The broader concept of judicial power is preferred here to the traditional "judicial independence" because the former better defines the concept this study seeks to measure. For an overview of the current definitions of judicial power, see Larkins 1996.

2. Judicial reforms altered the composition of the high court membership (either by a total replacement of justices or by adding new members); the selection process and tenure of justices; the ability of the executive and legislature to change the rules that govern the court; the extent of the court's judicial review powers, if any; the range of court jurisdiction; and the number of votes (a simple or super majority) required for judicial decisions to take effect. With respect to changes in judicial administration, national judicial councils were often established and charged with the naming, promotion, discipline, and removal of judges below the supreme court level; with control over the judicial budget; and with the professionalization of the judiciary through the creation of a judicial career path.

3. Cornelius and Craig (1991) describe a semiauthoritarian democracy as characterized by competitive (though not necessarily fair and honest) elections, which install governments more committed to political stability and labor discipline than to expanding democratic freedoms, protecting human rights, or mediating class conflicts.

4. A more favorable historical view of Mexican judicial independence is presented by González Casanova (1966). He writes that of the 3,700 Supreme Court cases between 1917 and 1960 in which the Mexican president was cited

as the defendant, the court conceded protection to the plaintiff in one-third of its decisions. "One arrives at the conclusion that the Supreme Court works with certain independence with respect to the executive," but, he concedes, "that it, of course, follows the executive in important political areas and services to provide it with stability" (1996, 36-37, author's translation).

5. For example, judicial councils were recently incorporated into the constitutions of Colombia (1991), Ecuador (1992), Paraguay (1992), and Argentina (1994).

6. The Supreme Court still prepares its own budget, but the CFJ is responsible for the budget for the rest of the judicial branch.

7. For example, the court retains responsibility for compiling and publishing judicial decisions and the list of nominees from which the Chamber of Deputies names members to the Electoral Tribunal.

8. In Spanish, "unconstitutionality of laws" is written as *acciones de inconstitucionalidad* and is usually translated as "unconstitutionality of acts." The term "unconstitutionality of laws" is used in this article because the Supreme Court may use this power to invalidate laws passed by legislative bodies. This power of judicial review does not extend to executive decrees or other government acts or actions.

9. In 1996 the Mexican constitution was modified so that political parties registered with the Federal Electoral Institute also have standing under the "unconstitutionality of laws" clause and enjoy the right to challenge electoral laws, even though they might not be represented in the legislature that passed the law.

10. The reform contains a major technical error. Under both of these constitutional control clauses, the case is not resolved if the agreement of eight justices is not achieved. According to Cossío 1998b, this oversight was unintentional, and it needs to be rectified to allow court decisions that do not achieve supermajority agreement to take effect for the parties involved.

11. It is interesting that "electoral issues" were originally excluded from the purview of the Supreme Court's constitutional control clauses, an indication that the ruling party believed that it would not be able to control the postreform court as it had in the past.

12. Federal and state elections were scheduled for April 1997. The reform stated that those seeking to challenge an electoral law affecting these elections would have only 15 days to petition the Supreme Court from the time the law was enacted, and the court would have only 15 days to respond. The reform's original 30-day limit would be reinstated after that. In addition, the 1996 electoral reform placed the electoral tribunal, the body charged with resolving electoral disputes, under the judicial branch rather than under the executive, as it had been previously.

The 1996 electoral reform also granted standing to the directors of officially registered political parties to challenge electoral laws via the unconstitutional laws clause (in addition to a petition by one-third of the members of a legislature or the attorney general). The court, however, may only examine the validity of the parts of the electoral law challenged and may not extend its ruling to cover constitutional issues that are not formally brought by the petitioners.

13. On average, each justice could appoint two judges per year (Cossío 1998a).

14. Zedillo, however, had more say over the composition of the CFJ than will any future president. According to the rules, the president names only one appointee; but as part of the reform package, Zedillo named all the members of the reconstituted Supreme Court. Because the Supreme Court's chief justice serves as the presiding member of the CFJ, Zedillo indirectly named another member of the council. Zedillo also wielded influence over the two appointees chosen by the PRI-controlled Senate.

15. The opportunity to challenge existing laws, however, presents itself if the law is modified and replaced by the passage of a new law.

16. For example, in reference to the prohibition on examining electoral issues before the 1996 modification, Justice Juan Díaz Romero asked, "what serves a constitutional norm that proclaims and grants a right if the constitutional mechanisms and instruments do not allow the reestablishment of that right if it has been violated?" He added that rights expressed in the constitution come before any other consideration in the interpretation of the constitution. In other words, the protection of natural rights is more important than the sanctity of electoral laws. Quoted in Morgan 1995 (author's translation).

17. For a detailed examination of the 13 Supreme Court decisions addressing the constitutionality of electoral rules filed under the court's two new constitutional control clauses during Zedillo's *sexenio*, see Finkel 2003.

18. The invalidation of the governability clause in Quintana Roo applied only to that state, and governability clauses remained on the books of nearly half of Mexico's state legislatures at that time. Had the Supreme Court invalidated the federal electoral code, the ruling would have applied to all states; but because the court was ruling on a state law, the ruling did not affect the law in other states. Challenges to these clauses will have to wait until a new electoral code is passed in the particular state or until the national congress addresses the issue in a modification of the federal electoral code. According to Corso 2000, the unanimous decision in the Quintana Roo case is a clear signal of way the court will rule on these cases in the future.

19. Opposition Congress members charged that Mexico's Union Bank had contributed millions of pesos to the PRI's campaign coffers in 1994 and, in exchange, had their private debt converted into public liabilities as part of a massive government bailout in 1995.

20. The opposition's interests already are to establish a judiciary with greater neutrality and authority; therefore they remain the same in an uncertain environment.

21. This aid, however, addressed judicial training and not the empowerment of the Mexican Supreme Court. For example, USAID's judicial funding for Mexico was targeted for establishing conferences between U.S. and Mexican judges, designing standards for judicial conduct, creating a pilot program to revamp the criminal justice system, and developing a speakers' program (Perez 1998).

22. The only other party to have representation in Congress, also on the left side of the political spectrum, was the Workers' Party (PT). All eight of the PT's members voted in favor of the reform.

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