Fix-Fierro, Héctor. 2003. "Judicial Reform in Mexico: What Next?" In *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, ed. Erik G. Jensen and Thomas C. Heller. Stanford, Calif. Stanford University Press.

Gudiño Pelayo, José de Jesús. 2003. "La calidad en la justicia: corresponsabilidad de jueces, litigantes y partes," *Revista del Instituto de la Judicatura Federal* 16: 183–99.

INEGI (Instituto Nacional de Estadística, Geografía e Informática). 1993. *Los profesionistas en México*. Aguascalientes, Mex.: INEGI.

Lawyers Committee for Human Rights. 2001. *Injusticia legalizada: procedimiento penal mexicano y derechos humanos*. (Translation of *Legalized Injustice: Mexican Criminal Procedure and Human Rights*.) Mexico: Lawyers Committee for Human Rights/Centro de Derechos Humanos "Miguel Agustín Pro Juárez."

Lomnitz, Larissa, and Rodrigo Salazar. 2002. "Cultural Elements in the Practice of Law in Mexico: Informal Networks in a Formal System." In *Global Prescriptions: The Production, Exportation and Importation of a New Legal Orthodoxy*, ed. Yves Dezalay and Bryant Garth. Ann Arbor: University of Michigan Press.

López Ayllón, Sergio, and Héctor Fix-Fierro. 2003. "'Faraway, So Close!' The Rule of Law and Legal Change in Mexico (1970–2000)." In *Legal Culture in the Age of Globalization: Latin America and Latin Europe*, ed. Lawrence M. Friedman and Rogelio Pérez Perdomo. Stanford, Calif.: Stanford University Press.

Pásara, Luis. 2003. "Cómo sentencian los jueces del D.F. en material penal." Unpublished research report. Mexico City: Centro de Investigación y Docencia Económicas, June.

Secretaría de Industria y Comercio. 1972. *Resultados del IX Censo General de Población 1970*. Mexico: Secretaría.

CHAPTER 12

Lobbying for Judicial Reform: The Role of the Mexican Supreme Court in Institutional Selection

JEFFREY K. STATON

A healthy judiciary is vital to a country's prospects for democratic consolidation and economic growth. Scholars suggest that an independent, well-functioning judiciary can constrain the state from violating fundamental civil liberties, provide an arena for the peaceful resolution of political and social conflicts, and increase investor confidence by stabilizing the norms under which property rights are protected (see O'Donnell 1999; Stone Sweet 2000; North and Thomas 1973). If a healthy judiciary can accomplish at least one of these normatively appealing goals, attempts to construct effective judicial systems should continue to be worthy of serious scholarship. In this chapter I ask how the behavior of high court judges might complement models designed to explain political decisions to build effective judicial systems. It is obvious that judges intimately affect the success of reform efforts (see Buscaglia and Dakolias 1996). After all, reform packages are largely designed to influence judicial performance. It is less clear how judges might influence institutional selection itself.

I argue that judges can do so in at least two ways. First, judges can help structure the portfolio of measures considered by reformers through consultation and direct lobbying. As highlighted by Speckman's contribution to this volume, Mexican judges have historically added their technical insight to legislative projects on administration of justice reform. Although this kind of influence may not change the general decision to delegate greater authority to the judiciary, it may well affect the substance of the delegation. Second, while judges are unlikely to have a direct influence over the outcomes of legislative bargaining, they may be able to affect public opinion concerning reform, and in that sense indirectly affect the

preferences of reformers. This is to suggest that judges might be able to successfully go public.[1]

These possibilities of influence raise a number of subsidiary questions about judicial lobbying, both positive and normative. Under what conditions might judges successfully promote their reform proposals? Are there certain kinds of reforms that should be easier to promote than others? Assuming that there are conditions under which judges can successfully promote reform, is this a normatively appealing possibility? Although I do not develop and test a complete model here, I argue that answers to these questions ought to address a set of key political trade-offs. In particular, judges considering a public strategy to influence judicial reform are likely faced with a trade-off between effective public relations and the maintenance of an essentially apolitical image. How judges evaluate this trade-off may explain both the intensity of judicial public relations and the ultimate success of lobbying efforts. Similarly, legislators considering reform proposals likely face policy trade-offs between judicial independence and judicial accountability and between legislative authority and judicial power. Clearly the way legislators evaluate these trade-offs will affect the ability of judges to successfully obtain institutional reform.

I evaluate these claims by discussing the role played by the Mexican Supreme Court in the ongoing process of federal judicial reform.[2] The ministers of the current Supreme Court, all appointed following a massive change in the structure of the federal judiciary in late 1994, have played an intimate role in the development of the judicial reform agenda.[3] They have done so largely through direct lobbying efforts aimed at critical national policymakers, efforts aided by a highly aggressive public relations strategy designed in part to create an accurate mechanism through which the Court could speak to the Mexican public.

[1] This concept is famously developed in Kernell 1993: 2–6.

[2] I limit my discussion to the Court's role in developing the federal judiciary. Although the state judiciaries are clearly vital substantive points of interest, an expanded analysis would go quite beyond the scope of this chapter. The chapter by Schatz, Concha, and Magaloni Kerpel addresses the state judiciaries. For a recent study of the state judiciaries, see Concha Cantú and Caballero Juárez 2001.

[3] The ministers continue to promote further judicial reform. Indeed, the Supreme Court is currently coordinating an international discussion on reforming the administration of justice. Proposals for reform may be downloaded at the Supreme Court's Web site, www.scjn.gob.mx.

Although the Court has significantly helped frame the reform agenda, its influence over policy outcomes has been mixed. The Court has successfully advocated policies designed to increase the efficiency of the judicial branch and consolidate the Court's internal control over the administration of the judiciary. On the other hand, legislators have declined to implement key proposals concerning judicial independence and the Court's constitutional jurisdiction.

In what follows I discuss how judicial lobbying complements two kinds of models designed to explain the decision to delegate political authority to an independent judiciary. I then describe the Mexican Supreme Court's efforts to influence its own reform process and highlight the constraints the Court has faced. I conclude by discussing how future theoretical and empirical work might proceed.

BUILDING HEALTHY JUDICIARIES

Why might politicians delegate significant power to judges and work to make their courts more independent, accessible, and efficient?[4] This is a relevant question in studies of democratizing states, where developing the rule of law is a dominant concern. There are two approaches to modeling this process. The first—what has come to be called the insurance hypothesis—is an electoral theory.[5] The notion on this account is that ruling political elites face significant risks in democratizing states that lack effective courts, especially when such elites perceive a nontrivial probability of losing power. Increasing judicial independence, for example, allows judges to serve as a sort of insurance policy against possible future electoral losses, where the former minority might either attempt to retaliate for previous violations of civil liberties or radically change the state's legal structure. Independent courts empowered to exercise constitutional review are supposed bulwarks against such possibilities. Finkel (1997) offers such an explanation for the 1994 Mexican judicial reform briefly reviewed below.

An alternative model suggests that the state might attempt to build healthy courts in order to resolve a credible commitment problem (North and Weingast 1989). If the state is incapable of committing itself to its own rules, then the expected return to citizen investment in the regime likely

[4] Prillaman (2001: 15–29) identifies accessibility, independence, and efficiency as the three crucial characteristics of a healthy judiciary.

[5] For a recent example in the U.S. legal literature, see Ginsberg 2002; see also Finkel 1997.

will be lowered, and so will the incentive to invest.[6] The state may have greater difficulty generating revenue, in inducing compliance with social norms, and perhaps even in reducing competing revolutionary claims on power. Magaloni's analysis of the 1994 Mexican federal reform suggests that it was not an Institutional Revolutionary Party (PRI) insurance policy against future electoral losses, but rather an effort to institutionalize inter-party conflicts in order to avoid potentially disastrous clashes in an increasingly pluralistic political landscape (Magaloni 2003). A related story, offered by Schatz (1998), suggests that elites in transitional democracies might delegate authority to courts in order to change perceptions of governmental illegitimacy. On such an account, it might be argued that the 1994 reform was a means of convincing an increasingly relevant electorate that the government was becoming more willing to respect the rule of law and thus worthy of electoral support.

Both of these approaches place some needed theoretical rigor on the analysis of judicial reform, and they clearly generate testable hypotheses about the relationship between legitimacy, electoral uncertainty, and the inclination to create healthier judiciaries. Still, neither approach can offer much insight into the substance of judicial reform. It is one thing to suggest that the state ought to be more likely to delegate authority as electoral uncertainty increases; it is quite another to generate predictions about the particular kinds of authority granted. It is here that judges can play an important role by promoting well-defined alternatives for judicial reform. Judges themselves are likely to be more familiar than politicians with plausible institutional solutions to problems of judicial independence, citizen access to the justice system, judicial efficiency, and effective constitutional control. Moreover, as members of the state, judges should be able to gain access to relevant policymakers, a crucial condition for effective lobbying (see Hansen 1991). In that sense, it should come as no surprise that judges around the world exercise some degree of influence over the reform process in this regard.[7]

This kind of influence over the reform project is important but limited. While access to political leaders is likely necessary in order to frame the agenda, it is unlikely that access will be sufficient. Just like any lobbying

[6] A similar model is considered in Landes and Posner 1975, where independent courts are considered means for locking in the gains from cooperation in legislative bargains.

[7] For examples in the United States, see Winkle 1990; in Russia, see Solomon 2002; in Zimbabwe and Tanzania, see Widner 2001.

group, judges require political leverage in order to be effective. Absent a natural constituency, such leverage may be hard to come by. Of course, like politicians and interest groups, judges can turn to the media in order to generate public support. They can do so by giving speeches, granting interviews, writing editorials, and publishing books on important subjects of judicial reform (Widner 2001: 36). Still, appealing to the public presents judges with a trade-off. One of the serious problems courts face in transitional democracies is a lingering sense that the judiciary is overly politicized (Prillaman 2001: 19–21). Direct appeals to the public over such issues as the appropriate distribution of government expenditures are a political enterprise. As such, they may risk a concurrent judicial attempt to appear detached from politics. If judges care about developing an apolitical image, they may face a trade-off between the possible gains to be captured through effective public appeals and the costs of appearing politicized. Accordingly, the degree to which judges engage in public strategies to affect reform and their ultimate success should be a function of the way they evaluate this trade-off.

Even if judges are able to frame the legislative agenda over judicial reform, policy success is not guaranteed. And perhaps this is a good thing. As Speckman reminds us in her chapter, there is no assurance that judge-led reform proposals will be in the general public interest. Instead, such proposals ought to reflect the preferences of the judiciary itself, and those preferences may or may not be in accord with some ideal separation of powers. Proposals to both increase judicial independence from the elected branches and expand judicial powers of constitutional review also present legislators with difficult choices, especially if they value judicial accountability and their own prerogative over public policy. Granting judges greater independence weakly decreases the ability of elected officials to hold judges accountable for their behavior.[8] Also, granting greater constitutional review authority to courts weakly decreases legislative control over public policy. In short, legislators—and, implicitly, the people they represent—face trade-offs between judicial independence and accountability and between legislative control over public policy and judicial power. The success of judicial attempts to influence reform, as well as a normative evaluation of the appeal of judicial lobbying, will surely be a function of how legislators and their constituents evaluate these trade-offs.

[8] By "weakly decrease" I mean that greater independence will either produce no change in judicial accountability or will reduce it.

On the other hand, there are classes of reform proposals, like those concerning judicial efficiency, that are unlikely to present legislators with difficult policy choices. For example, typical solutions to judicial inefficiency include designing better legal education and judicial training, updating antiquated mechanisms for communication within the judicial hierarchy, and eliminating overly restrictive procedural rules (Prillaman 2001: 17–18). There may not be consensus over particular approaches to reducing inefficiency, and politicians might bargain over the costs associated with making courts more efficient. However, it is unlikely that efficiency proposals will undercut either legislative policy authority or the ability to hold judges accountable. Accordingly, in the absence of a significant legislative trade-off, we might suspect that judges will more successfully promote reforms designed to combat inefficiency than reforms over independence or judicial power.

MEXICAN SUPREME COURT MINISTERS AND JUDICIAL REFORM

In this section I discuss how the ministers of the Mexican Supreme Court have advanced their interests in reform though direct lobbying and public relations. I then review specific efforts the Court has made to promote reform in the elected branches of government. While the Court has successfully shaped the reform agenda, its efforts have not fully determined the outcomes of the reform debate.

Beginnings

On December 31, 1994, newly elected President Ernesto Zedillo published a series of recently adopted constitutional amendments altering the structure of the Mexican federal judiciary.[9] The amendments created an entirely new Supreme Court and started the ministers down a road of real political

[9] In the senatorial debate on the reform, members of both the Institutional Revolutionary Party (PRI) and National Action Party (PAN) spoke vehemently in favor of the proposal. A few *perredistas* (members of the Party of the Democratic Revolution, or PRD), however, stood against the reform, arguing that it did not adequately address the widespread problem of corruption and that it provided inadequate mechanisms for access to justice. In the end, however, 108 senators out of 112 present voted to pass the reform, *en lo general* and *en lo particular* as amended. For a fine review of the parties' arguments, see Carranco Zúñiga 2000: 109–17.

relevance. The 1994 reform has been thoroughly analyzed by a number of distinguished scholars, and accordingly I only note its key elements here.[10]

The Zedillo amendments reduced the size of the Supreme Court from twenty-six to eleven ministers and the number of benches from four to two.[11] As part of its transitory provisions, all members of the Supreme Court were forced to resign, and only two members were reappointed to the new Court. Under a new appointment procedure, the Senate selects each minister from a list of three nominees.[12] Once appointed, the ministers select a president from among their own number, who serves a four-year term. In addition to organizing the Court's administrative affairs, the president leads the seven-member Federal Council of the Judiciary (CJF), also created in 1994 in order to relieve the Supreme Court of much of its administrative responsibilities.[13]

The 1994 reform dramatically altered the Supreme Court's constitutional jurisdiction. The amendments created a new institution of abstract constitutional review, the action of unconstitutionality. This action complements Mexico's traditional means of constitutional review, the *amparo* suit. Designed in the nineteenth century, *amparo* grants jurisdiction to federal courts in order to address alleged governmental violations of individual rights. Legal effects in *amparo* are limited to the parties immediately involved in the case, and thus *amparo* restricts the degree to which Mexican

[10] For analyses in Spanish, see Fix Zamudio and Cossío Díaz 1995; Carranco Zúñiga 2000. For English-language reviews, see Fix-Fierro 2001; Domingo 2000.

[11] The benches previous to the reform separately specialized in civil, penal, administrative, and labor matters. Under the new configuration, the first bench hears penal and civil cases; the second hears labor and administrative cases.

[12] After the president submits the list, the Senate has thirty days to make an appointment, which it does via a two-thirds-super-majority voting rule. In the event that the Senate fails to choose a minister within thirty days, the minister designated by the president is appointed. However, if the Senate rejects the entire list, the president must submit another. If the Senate rejects the second list, the president's designee is appointed (Constitución Política de los Estados Unidos Mexicanos [CPM], Art. 96). This procedure was tested in the winter of 2003, when Ministers Aguinaco Alemán and Castro y Castro retired. As of March 2004, the Congress had only appointed one new member to the bench: distinguished law professor José Ramón Cossío. The other seat remained vacant following a congressional deadlock over Vicente Fox's second *terna*.

[13] CPM, Art. 100. For a review of judicial councils in Latin America, see Fix Zamudio and Fix-Fierro 1996.

courts can significantly affect public policy.[14] In contrast, the action of unconstitutionality grants the Supreme Court the power to set general effects in a certain class of cases, as long as eight of the eleven ministers adopt the majority proposal. The reform also enhanced the Court's power in *constitutional controversies*, an action under which the Supreme Court rules on conflicts arising between two branches of the same level of government and disputes between governments of distinct levels in Mexico's federal system. Finally, in creating the action of unconstitutionality, reformers implemented a forgiving standing requirement that offers the power to challenge the constitutionality of laws to minorities of the state legislatures, minorities of either house of the national Congress, and federally registered political parties, among other agents of the state.[15] In short, the Zedillo reform drastically changed the institutional structure of the federal judiciary. Perhaps most important, by requiring the resignation of all then-current members, the reform paved the way for a new set of judges to revitalize the third branch of government.

A New Supreme Court

The eleven ministers who took the bench in early 1995 hoped to develop a trusted federal judiciary and turn the Court itself into an effective constitutional tribunal, one capable of systematically controlling constitutional meaning and ultimately creating conditions under which the rule of law might be fully realized.[16] The ministers would not easily attain this appropriate yet lofty goal. Both systematic and anecdotal evidence suggested

[14] The authoritative work on *amparo* is Burgoa O 1998. A terrific if somewhat dated work in English is Baker 1971.

[15] CPM, Art. 105 (II)A-F.

[16] In his first annual report on the state of the federal judiciary, President Aguinaco Alemán spoke to the goal of developing public trust. See Aguinaco Alemán 1998: 22–23. Further, many of the Court's administrative accords on the judiciary's internal design are justified as means of perfecting the Court's role as a constitutional court. See, for example, Acuerdo 6/1999 Considerando 4, whose exposition of motives states, "It is essential to permit the Supreme Court, as happens in other nations, to concentrate all of its efforts on the recognition and resolution of new issues or on those issues of such high importance that their resolution will influence the interpretation and application of the national judicial order." Also see Acuerdos 6/2000 Considerando 1, 9/1999 Considerando 7, all of which advocate the Supreme Court's position as a constitutional court.

that even after the 1994 reform, the Mexican public continued to consider the federal judiciary largely inaccessible to most people, unworthy of public trust, and subservient to the executive branch.[17] As noted by Fix-Fierro in his contribution to this volume, while members of the federal judiciary might have liked to blame attorneys and police for the failures of justice in Mexico, the ministers recognized that public opinion placed the blame on the judges.[18]

In order to help change the judiciary's public profile, the ministers began to develop further institutional reforms. Among a long list of interests, the Supreme Court desired changes in rules concerning the CJF, the judicial budget, the nature of the *amparo* suit, the power to initiate laws in Congress, and the ability to directly regulate the distribution of cases between the Court's benches and the collegial circuit courts of appeals.

Some elements of the Court's reform package could be carried out independently, but others required action from the elected branches of government. This situation presented two problems. Although the ministers could directly contact party leaders, cabinet officials, and the president, as unelected judges they lacked a natural constituency that they might leverage in conversations with public officials. More seriously, they had no effective way of explaining their proposals to the Mexican public and, as a result, no clear way of influencing legislative or executive policy interests through their own supporters. The reason? Neither print nor television media, which had historically ignored the Supreme Court, appeared prepared to accurately cover the judiciary. Jesús Aranda, one of the first reporters to provide daily coverage of the Court, described the situation as follows:

> Before [the reform], the Court was very closed off. There was a public relations office that would suddenly issue a press release, but reporters did not go to the Court. In the end, nothing was known or understood about the Court. This reflected the judiciary's situation in the country. Why? Because one always spoke of an executive or the legislature. The judiciary

[17] The results from a 1996 *Voz y Voto* poll suggest that nearly 50 percent of Mexico City residents who had no experience with the legal system believed the Supreme Court ministers themselves to be dishonest or very dishonest.

[18] See interviews with Ministers Palacios, Aguirre Anguiano, and Ortiz Mayagotia in Camacho Guzmán 1999.

> was always seen as an appendage of the executive. The judiciary did whatever the president wanted.[19]

The result of this negative image and general lack of interest was that reporters were unfamiliar with the judiciary and thus unprepared to provide the kind of coverage that might allow the ministers to develop a consistent message.

In order to change this situation, the Supreme Court pursued a multidimensional media relations strategy. This work was originally organized by its own Office of Public Relations (DCS).[20] The DCS took out advertisements announcing the Court's autonomy. It published books, pamphlets, comics, and videos summarizing the Court's most salient decisions, describing its internal structure, and highlighting its new role in Mexican politics. The ministers themselves granted interviews with the media on a wide variety of topics (Staton 2002: 152–53). Further, the DCS was charged with developing accurate media coverage.[21] The judicial writing style is not reader-friendly; as a result, resolutions are unusually difficult to interpret without a reasonable familiarity with the law. To address this issue, the Supreme Court offered legal seminars for reporters so that they might better cover the intricacies of judicial resolutions.

Substantively, the DCS attempted to craft an image of an independent, apolitical Supreme Court, one responsible for an increasingly accessible and efficient judiciary. In order to help promote a consistent message, the DCS issued press releases announcing information on pending and resolved cases and on key administrative decisions taken by the Supreme Court and the CJF.

[19] Jesús Aranda, personal communication, June 6, 2001, Mexico City. Despite this perception, the Supreme Court has taken up the issue of legal education in its most recent effort to generate national debate on justice reform. As of March 2004 it had collected thirty proposals for institutionalizing the education of attorneys.

[20] I discuss the Court's public relations work in Staton 2002: 152–89.

[21] In particular, the DCS was required to help better inform the Mexican public about the actual structure and role of the federal courts through the media. The DCS was also asked to publicly yet professionally defend the judiciary's independence. The Court's public relations policy is published in *Compromiso, órgano informativo del Poder Judicial de la Federación*, no. 1 (July–August 1999): 21–22. Arturo Vizcaino Zamora, personal communication, June 10, 2000, Supreme Court of Justice of the Nation, Mexico City.

Figure 12.1 shows the number of press releases announcing case results and administrative decisions issued each quarter from January 1997 through June 2003.[22] With the exception of the first quarter of 1997, the Court consistently issued more press releases announcing administrative decisions than results of cases. However, while the number of releases on cases remained relatively stable until 2003, the number of administrative press releases skyrocketed beginning in 2001.[23] In fact, in the fourth quarter of 2002, the overwhelming majority of press releases (97 percent) announced administrative decisions or proposals, many of which directly concerned issues of judicial reform. For example, between 2001 and 2003, 14 percent of the Court's administrative press releases announced the opening of a new federal district court or circuit tribunal, an important element of its reform package to enhance judicial efficiency and increase access.[24] These administrative announcements frequently contained reviews of substantive messages the Court wished to promote. Indeed, 23 percent of the Court's press releases announcing the opening of a new court quoted a speech by a member of the Supreme Court or the CJF making an appeal for a constitutional reform of the judiciary's budgetary authority. Sixty-three percent of those same press releases contained a message reaffirming the Court's interest in promoting justice for all Mexicans.

Perhaps of greater interest, the number of press releases issued by the Supreme Court plummeted in 2003. While the Court averaged twenty-four releases per quarter between 1997 and 2002, it issued only five during the first two quarters of 2003. This reduced activity corresponds with the election of the Court's new president, Minister Mariano Azuela, and suggests that the ministers may have begun to seriously consider the risks of cultivating such a high public profile. I return to this issue below.

Although coverage of the Supreme Court has certainly grown since 1995, we should be careful about drawing causal inferences about the

[22] The codebook for these data is available upon request from the author. For the purposes of this figure, the coding is rather straightforward.

[23] The likely explanation for this pattern is that in 2001 the press offices of the Supreme Court and the Federal Judicial Council were consolidated. Insofar as the CJF does not resolve legal cases, the increase in total press releases resulting from combining the two press offices had to affect the number of administrative announcements only. On the reason for this consolidation, see Staton 2002: 183–86.

[24] Data and codebook available from the author upon request.

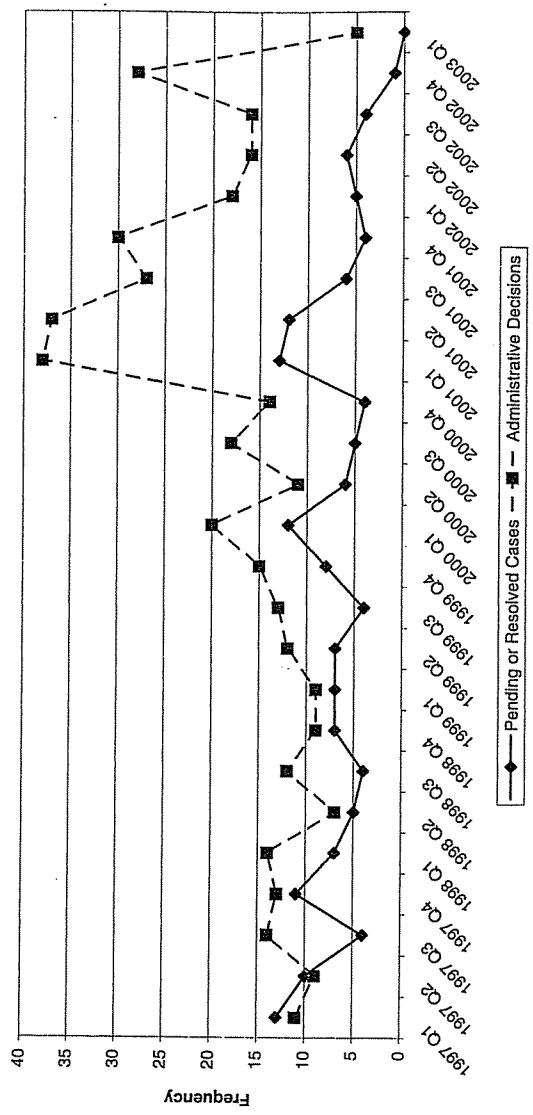

Figure 12.1. Supreme Court Press Releases by Quarter (1997-2003)

Court's effect on its own coverage.[25] Given the Court's new powers of constitutional review, it has increasingly resolved politically relevant cases, and those cases generate considerable interest in the press, independent of the Court's activities. It is also debatable whether the Court effectively crafted a new image or substantially increased public support for particular reform proposals.[26] Still, it is clear that by the end of 2002 the DCS and an increasingly cognoscente press corps offered the Court an effective mechanism for communicating its reform interests to the public. I now discuss examples of the Court's attempts to influence judicial reform.

Judicial Independence

Unsurprisingly, the Supreme Court has promoted institutional changes designed to increase the independence of the federal judiciary. The key proposal has been a constitutional amendment guaranteeing the judiciary a fixed yearly percentage of the federal budget. Constitutionally, the Supreme Court is empowered to submit a budget directly to Congress for its consideration, while the CJF submits a budget for the remainder of the judiciary. In practice, this requirement has meant that the Court negotiates directly with the president of Mexico (Fix-Fierro 2001: 33). The concern among the ministers is that this budgetary structure grants the legislature an unnecessary degree of control over the judiciary's activities (Aguirre Anguiano 2001). Despite the lack of a fixed budgetary provision, the judiciary's budget has grown tremendously over the past six years. Fix-Fierro (2001: 33) suggests that the current allocation is over four times as great as

[25] A search at *La Jornada*'s Web site for news articles on the Supreme Court reveals the significant change in coverage. For example, a search for "Suprema Corte" in 1996 generates 460 hits. In contrast, an identical search in 2001 and 2002 generates 1,312 and 1,964 hits, respectively.

[26] Data obtained by the newspaper *Reforma* on the Supreme Court's national approval suggest that in the days immediately following the Fox transition, 50 percent of Mexicans surveyed held a favorable opinion of the Court. Only 7 percent expressed a negative opinion; see Staton 2004. This result suggests a different understanding of the Court's image than that contained in Domingo 2000. By February 2002, however, only 39 percent of respondents issued a favorable opinion, while the percentage of respondents issuing a negative opinion had risen to 17 percent. Moreover, these latter results are confirmed by Fix-Fierro (2001: 39), who discusses a poll reported in *Este País* wherein only 36 percent of respondents suggested that they had between some and much confidence in the Supreme Court.

it was in 1995. However, for the ministers the issue is not how much the Court's budget has grown but whether the Court has to consistently seek legislative approval for increases.

The Court has promoted its budgetary reform initiative via direct lobbying and through more subtle forms of public relations. Roughly six weeks after Vicente Fox won the Mexican presidency, his transition team on justice and public security matters took part in a breakfast meeting with the eleven ministers of the Supreme Court. The subject of the meeting, which was widely covered by the national media, concerned a number of the president-elect's reform proposals for the justice system, none of which addressed the Court's budget reform.[27] Although the ministers were able to press their interests directly to the transition team, there was no assurance that the conversation would receive general media coverage and thus effectively compete for a position on the Fox agenda.

Taking advantage of this well-publicized opportunity, the Supreme Court's media-savvy president, Genaro Góngora Pimentel, held a press conference immediately after the transition team breakfast. He announced that he had presented the team with a thirteen-page comparative analysis of budgetary rules concerning Latin American judiciaries.[28] In it, Góngora vigorously argued for a fixed judicial budget. Important for the coverage the Court would receive on the following day, the DCS had previously prepped beat reporters covering the meeting on the interests of the Court, paving the way for coverage that focused not just on what Fox cared to promote, but on the ministers' interests as well. In somewhat of a public relations coup for the Court, the following day's newspaper coverage highlighted the Court's budgetary proposal alongside Fox's justice system reform (see, for example, Torres 2000).

The budget continued to be a hot reform issue for the Court over the next two years. President Góngora pushed this issue as a regionwide concern for judicial independence, promoting the reform at both national conferences and a series of international meetings of high court judges.[29] In August 2002 the Congress formally began to consider the proposal; however, the initiative seems to have died during the early months of 2003. The results of the Court's efforts on the budgetary reform suggest that the ministers were successful in generating media coverage and eventually inducing Congress to formally consider the measure, but they have been incapable of generating institutional change.

[27] In particular, Fox proposed to move the federal agrarian, labor, and administrative courts from the executive to the judicial branch. He also proposed to transform the Office of the Attorney General (PGR) into something like the United States' Justice Department and to create a new cabinet position on security and justice services (Lizárraga 2000).

[28] This brief study is entitled *Debilidad constitucional en el Presupuesto de Egresos del Poder Judicial de la Federación*. It may be obtained from the Judiciary's Office of Social Communication upon request (www.cjf.gob.mx/comsocial/default.asp).

Judicial Authority

The Supreme Court has promoted three significant reform initiatives since 1994 concerning its jurisdiction, constitutional review powers, and administrative authority. Its most successful proposal involved a plan to redefine the authority of the CJF. The initiative arose out of a conflict between the CJF and the Court over whether the CJF's administrative decisions could be challenged through *amparo* (Aranda 1998). The fundamental political issue involved whether the Supreme Court sat at the top of the judicial hierarchy.

In January 1999 the Court, hoping to clarify its position, sent a formal proposal to President Zedillo, who submitted the proposal to Congress with limited modifications. The changes adopted by Congress reduced the tenure of CJF counselors from six to three years and required that the current members of the CJF resign. More important, the reform changed CJF selection procedures. Originally the Court selected three of the seven counselors randomly from a list of qualified applicants. The reform granted the Court the power to select members of its choosing, giving it direct control over a majority of the judicial council's membership. This reform, which was driven largely by the Court's direct lobbying efforts, undoubtedly increased its administrative authority, allowing the ministers to create a fully coherent strategy for developing the federal judiciary.

The Court has also promoted a constitutional amendment granting it the power to initiate bills on subjects concerning the judiciary. The Court's preferred reform would grant it the ability to initiate laws related to federal jurisdiction and, predictably, the judicial budget. For two years beginning in 2000, President Góngora repeatedly called on President Fox and Congress to proceed with this change. On June 26, 2001, Góngora testified before the Chamber of Deputies' Special Committee on State Reform. He

[29] See the findings from the 7th Cumbre Iberoamericana de Cortes y Tribunales Supremos de Justicia, at www.cjf.gob.mx.

argued that because the Supreme Court best understands which of its institutions require reform, it ought to be granted the power to initiate its own laws. Such a power would not interfere with the authority of the other two branches of government, because Congress could always reject its proposals and the president could always veto them. Such a power, on Góngora's account, would simply allow the Court to ensure the consolidation of democracy.[30] PAN deputy Margarita Zavala introduced a constitutional reform in December 2003 that would grant the Court the power to initiate laws concerning the Organic Law on the Federal Judiciary; however, the proposal denies the ministers formal influence over the judicial budget. As of March 2004 the bill still sat in committee.

Clearly, the most well-developed reform measure on the Court's authority involves a drastic change in the Amparo Law. On November 17, 1999, President Góngora formally installed a seven-member commission charged with investigating how best to reform *amparo*.[31] The commission sought proposals from members of the legal community and the general public. The elaborate process of submission and review generated 1,430 distinct reform recommendations. Of the 247 articles in the Amparo Law, only 18 did not receive any attention by those making proposals. With the written proposals and the commission's own summaries in hand, the commission hosted eleven public conferences on the subject of the reform in cities around Mexico between March 3 and April 7, 2000.[32] These meetings were attended by 955 lawyers and included 89 presentations on the

[30] See Comunicado 421, Dirección General de Comunicación Social, Suprema Corte de Justicia de la Nación.

[31] The commission, designed to be as inclusive as possible, comprised judges, legal scholars, and attorneys. Minister Román Palacios chaired the panel. The members included Minister Silva Meza, José Ramón Cossío Díaz, César Esquinca Muñoz, Héctor Fix Zamudio, Javier Auijano Baz, Manuel Ernesto Saloma Vera, and Arturo Zaldívar Lelo de Larrea. At the time of their appointments, Cossío Díaz was chair of the Department of Law at the Instituto Tecnológico Autónomo de México; Esquinca Muñoz was general director of the Instituto Federal de la Defensoría Pública; Fix Zamudio was Emeritus Researcher at the Universidad Nacional Autónoma de México's Instituto de Investigaciones Jurídicas; Saloma Vera was a professor at the Instituto de la Judicatura Federal; and Zaldívar Lelo and Saloma Vera were in successful private practices. See review in Suprema Corte 2001.

[32] Conferences were held in Baja California, Guanajuato, Tlaxcala, Querétaro, Durango, Oaxaca, Chiapas, San Luis Potosí, Cuernavaca, Zacatecas, and Ciudad Victoria.

Amparo Law. By making this process so public, the Court attempted to build wide support for the initiative it would send to Congress.

On August 29, 2000, the commission submitted its formal reform to the ministers. In light of the monumental number of individual recommendations that the commission deemed reasonable, its members opted to draft an entirely new law. This draft was accepted by a majority of the Court and was subsequently sent to the president and both chambers of Congress for consideration.[33] The proposal's most controversial article involves a reconsideration of the famous Otero Formula, which limits the effects in *amparo* to the parties immediately involved in the suit. Although the proposal allows the Court to continue making decisions that establish only specific effects, it also provides a mechanism wherein the ministers may speak generally on the constitutionality of laws.[34] If the Supreme Court establishes a formal jurisprudential thesis on the unconstitutionality of a law or regulation, within thirty days it may set general effects by declaring this law or regulation unconstitutional, thereby abrogating the norm.

If adopted, this reform would clearly change the Court's ability to control constitutional meaning. Of course, it would also fundamentally alter the original formulation of *amparo*, rendering it much more similar to the individual constitutional complaint evident in many European systems of constitutional review (Stone Sweet 2001: 43–45). Despite some important criticisms from traditional Mexican legal scholars, the Court has been resolute in its search for this new power.[35] That said, Congress has never formally undertaken consideration of the Court's proposal, even after the grand effort to mobilize public support.

Efficiency

Many of the Court's reform measures affecting judicial efficiency have not required the assistance of the elected branches of government. Efforts such

[33] Minister Juventino V. Castro y Castro, himself a former public prosecutor, filed an important dissent on the proposal concerning the removal of the Ministerio Público. The Court has published this dissent in a book entitled *Réquiem para el Ministerio Público en el Amparo*.

[34] Proyecto, Arts. 232–235.

[35] In particular, Doctor Ignacio Burgoa, author of the definitive work on *amparo* and law professor to many of the ministers, filed his disagreement with the Supreme Court in November 1999. In response, Góngora made a point of publicly thanking Burgoa and welcoming further criticism. See Comunicado 303, Dirección General de Comunicación Social, SCJN.

as creating an internal network for employees of the federal judiciary, creating a school for the continuing education of members of the judicial career, and automating the storage of jurisprudential theses were all carried out within the judiciary itself. Other reform measures have required the participation of the elected branches.

In 1999 the ministers proposed a constitutional amendment to grant the Supreme Court the authority to distribute cases among its benches and the collegial circuit courts. The problem, as the Court saw it, was that it was being weighed down by *amparo* appeals upon which it had already defined jurisprudential theses. Without the authority to decide for itself on the kinds of appeals it could remit to the circuits, the Court would have had to appeal directly to Congress each time it believed there could be gains from a more efficient distribution of jurisdiction. The Court's efforts in this regard were successful.[36]

The Court and the CJF's efforts to create a greater number of judgeships and courts have necessitated a significant increase in the judicial budget. Such increases required congressional acquiescence and, accordingly, some reasonable justification from the judiciary. The number of federal courts has increased tremendously since the 1994 reform. Fix-Fierro reports that the federal judiciary added seventy-six district courts between 1995 and 2001 and eighty-three collegial circuit courts over the same period. Unfortunately for the Court's interests, the number of cases per judge has increased along with the increase in the number of courts, and thus there has not been an appreciable decrease in the average workload of federal judges (Fix-Fierro 2001: 41). That said, data compiled by the World Bank suggest that the Mexican federal judiciary may be making some progress, at least in civil *amparo* cases. Among the sixteen countries for which it collected sufficient data in 2000, Mexico ranked highest on its clearance measure, the ratio of cases disposed to cases filed in a particular year.[37] The sample included regional neighbors Costa Rica, Nicaragua, Ecuador, Peru, Argentina, and Colombia. While this result is encouraging, Schatz, Concha, and Magaloni Kerpel's contribution to this volume reminds us that the Mexican judicial system is multi-tiered and incredibly complex. Accordingly, we ought not to infer that all Mexican courts are becoming increasingly efficient. Moreover, insofar as these data are limited to civil *amparo* cases in 2000, they do not even allow the inference that all federal courts are becoming more efficient.

[36] See Ley Orgánica de la Federación, Art. 11, V.

[37] The data are stored at http://www4.worldbank.org/legal/database/. I can produce a table for July if requested.

Summary

Since 1994 the Mexican state has been building a healthier judiciary, and the ministers of the Supreme Court have played an important role in molding the substance of the process. Still, the ministers have had to address a number of obstacles that limit their ability to promote reform. First, they could not implement many changes without the support of the elected branches of government. Second, as judges they lacked a natural constituency from which they might have leveraged support for their proposals. Third, they lacked a mechanism through which they might directly communicate their proposals to the Mexican public.

I suggested above that the Court attempted to address these problems by directly lobbying members of the executive and legislative branches. They implemented a coordinated public relations effort designed to create accurate media coverage and promote reform messages to the public. Substantively, the Court has been relatively successful in its attempts to frame the reform debate. Although the ministers have been successful in some cases, two of their most important reform proposals—the Amparo Law reform and the budgetary reform—have not been enacted. Moreover, since the beginning of 2003, the Court has greatly reduced its public relations work. These patterns suggest a number of limitations on the ability of judges to affect the policy choices of elected officials on judicial institutions. I end with a discussion of these limitations.

CONCLUSIONS

The notion that judges might be able to shape the legislative or executive reform agenda adds a degree of substance to the theoretical literature analyzing why politicians might choose to build healthy judiciaries. The models I review above suggest two ways of understanding the incentive to reform. Still, they do not offer much more than general predictions about delegation. That is, it is not clear what either the insurance or credible commitment accounts have to say about the particular institutional choices that elected officials make. For many political scientists, perhaps this is not important. To understand the plausible incentive structures that induce delegation might be enough. Still, if we want to either accurately describe the world or understand how actual judicial institutions are created, we

might do well to consider the role of judges in helping to shape the reform agenda. Of course, there are important limitations on the effects we might suspect judges to have.

Going Public

Clearly, part of the Supreme Court's program to influence judicial reform has involved an effort to explain its positions to the Mexican public. This part of the Court's public relations strategy is crucial insofar as the ministers do not represent a relevant set of constituents outside the members of the judiciary itself. If the Court wants leverage, it has to create it through developing wide public support for its interests. Yet this effort to generate support for particular reform measures may be limited by the Court's concomitant desire to present itself as fundamentally apolitical (see Silva Mena 2000). Making sales pitches directly to voters risks developing a politicized image, precisely what most judges, and certainly the ministers of the Mexican Supreme Court, would like to avoid. Moreover, strong appeals for coverage may invite negative as well as positive analysis. In fact, recent articles on the Mexican judiciary in the newspaper *Reforma* have focused on the rise of already high judicial salaries and questions regarding the judiciary's decisions to increase the number of judges and courts (see Fuentes 2003a, 2003b; Fuentes and Jiménez 2002).

Appeals to the public for support concerning judicial reform thus present judges with a compelling trade-off. Remaining inactive and largely detached from the political arena limits the ability of judges to create support for their reform efforts. However, running an aggressive public relations campaign risks developing an image of a politicized judiciary. The clearly noticeable reduction in the Supreme Court's public communication with the press since January 2003 suggests that the ministers may perceive that the marginal benefits obtained by continuing the Court's previously aggressive public relations work may now be outpaced by the marginal costs of appearing to be just another political branch of government.

A future model of this process might more systematically evaluate the conditions under which judges will be more likely to risk developing an overly politicized image. At first blush, one might hypothesize that such a choice will be nonlinear in the degree of public trust enjoyed by the judiciary. That is, we might expect judges who enjoy little trust and judges who are greatly trusted to engage in fairly aggressive public relations, while judges that fall somewhere in the middle might be expected to be more careful. The idea here, though underdeveloped, is that while judges who enjoy little trust likely will have less impact on public opinion, they will also have little to lose by generating a negative image. Judges who enjoy much trust might expect their appeals to be particularly persuasive. In contrast, judges who are neither significantly trusted nor distrusted might not expect to greatly affect public opinion and perceive the costs of appearing politicized to be significant. Clearly, both theoretical and empirical work on this issue is in order.

Political Responses

Successfully convincing executives or congressional delegates to consider reform proposals does not mean that those proposals will be enacted. Given their role as high-ranking officials of the state, we might expect high court judges to obtain relatively easy access to policymakers. Indeed, the Mexican Supreme Court seems to have been quite capable of directly lobbying the most important elected officials of the state. That said, the Court has failed to successfully promote both its *amparo* and budget reforms, issues on which it has expended considerable resources. In the end, it would appear that the ministers have been largely successful in obtaining desired results in areas that did not directly affect significant sources of legislative or executive power, especially power over the judiciary itself. The conflict with the CJF was largely an intra-judicial battle, not one whose result would affect important legislative interests. The same can be said for the reform to the Court's power to remit certain cases to the circuits.

In contrast, the Court has been fairly unsuccessful in its attempts to gain budgetary independence and expanded powers of constitutional review in *amparo*. Although reformers might expect gains from judicial independence on both the insurance and commitment accounts, they must trade independence off against judicial accountability (see Burbank and Friedman 2001: 14–17). Similarly, reformers must trade legislative authority off against judicial power. Granting the judiciary further budgetary independence would have surely created a more independent set of courts; however, it would have rendered those courts less accountable as well. Budgetary authority is an important check on the power of the judiciary, one that might be carefully guarded by institutional equals. Also, the Supreme Court has been increasingly willing to challenge the authority of both Congress and the president, especially since the 2000 transition (Finkel 2003). Enhancing the Court's powers in *amparo* might allow the Court to more efficiently control constitutionality. However, it would also mean that the Court could better control public policy. Without a pressing

legislative reason for change, it is not surprising that the *amparo* reform has stalled.[38]

For future research, the point here is a simple one. All things equal, we might expect judges to be at least as successful as other powerful interest groups in shaping reform debates. However, we should expect judges to have less success influencing the outcomes of debates in areas that directly enhance their powers over public policy or affect the ability of the elected branches to hold judges accountable for their actions than in areas that do not.

References

Aguinaco Alemán, José Vicente. 1998. *El nuevo poder judicial de la Federación.* Mexico City: Suprema Corte de la Nación.

Aguirre Anguiano, Sergio. 2001. Comments by Minister Aguirre Anguiano at the 7th Iberoamerican Summit of Supreme Tribunals and Courts, November 28. Summarized in Comunicado 581, Dirección General de Comunicación Social, SCJN.

Aranda, Jesús. 1998. "Resurge la pugna entre la Corte y el Consejo de la Judiciatura," *La Jornada*, August 24.

Baker, Richard D. 1971. *Judicial Review in Mexico: A Study of the Amparo Suit.* Austin: University of Texas Press.

Burbank, Stephen B., and Barry Friedman. 2001. "Reconsidering Judicial Independence." In *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, ed. Stephen B. Burbank and Barry Friedman. Thousand Oaks, Calif.: Sage.

Burgoa O, Ignacio. 1998. *El juicio de amparo.* 24th ed. Mexico City: Porrúa.

[38] An alternative explanation for the death of the *amparo* reform is that Mexicans have become accustomed to the current *amparo* legislation, and as such the Court's failure was a result of some sort of policy inertia. It was simply too costly to try to get the gigantic Amparo Law to move in a drastically different direction. If this argument is correct, then the entire 1994 judicial reform, which radically changed the structure of the federal judiciary and created a new constitutional action, would seem all the more puzzling. It would appear that inertia undermines all significant policy reforms, not just the Mexican *amparo* reform. We might ask how an inertia story would explain why the Court has been unable to win its fixed budgetary amendment. Has the Mexican public become too accustomed to the president submitting the budget? While the political account I suggest certainly may be falsified, its chief advantage is that it suggests a consistent explanation for a variety of the Court's policy successes and failures.

Buscaglia, Edgardo, and Maria Dakolias. 1996. "Judicial Reform in Latin America." Washington, D.C.: World Bank.

Camacho Guzmán, Óscar. 1999. "El presidente de México no tiene privilegios en la Suprema Corte," *Milenio Diario*, October 11.

Carranco Zúñiga, Joel. 2000. *Poder Judicial.* Mexico City: Porrúa.

Concha Cantú, Hugo Alejandro, and José Antonio Caballero Juárez. 2001. "Diagnóstico sobre la administración de justicia en las entidades federativas: un estudio institucional sobre la justicia local en México." Mexico City: Universidad Nacional Autónoma de México.

Domingo, Pilar. 2000. "Judicial Independence: The Politics of the Supreme Court of Mexico," *Journal of Latin American Studies* 32: 705–35.

Finkel, Jodi. 1997. "An Analysis of Mexico's 1994 Judicial Reform." Paper presented at the international congress of the Latin American Studies Association, Guadalajara, April.

———. 2003. "Supreme Court Decisions on Electoral Rules after Mexico's 1994 Judicial Reform: An Empowered Court," *Journal of Latin American Studies* 35 (November).

Fix-Fierro, Héctor. 2001. "Judicial Reform in Mexico: What Next?" Paper presented at the "Rule of Law Workshop: Legal and Judicial Reform in Developing Countries," Stanford Law School, February 26.

Fix Zamudio, Héctor, and José Ramón Cossío Díaz. 1995. *El poder judicial en el ordenamiento mexicano.* Mexico City: Fondo de Cultura Económica.

Fix Zamudio, Héctor, and Héctor Fix-Fierro. 1996. *El Consejo de la Judicatura.* Mexico City: Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México.

Fuentes, Víctor. 2003a. "Duplican salaries al Poder Judicial," *Reforma*, February 25.

———. 2003b. "Disfruta élite judicial de privilegios," *Reforma*, February 26.

Fuentes, Víctor, and Benito Jiménez. 2002. "Cuestionan crecimiento de poder judicial," *Reforma*, December 12.

Ginsberg, Thomas. 2002. "Economic Analysis of Constitutional Law: Economic Analysis and the Design of Constitutional Courts," *Theoretical Inquiries in Law* 3 (January): 49–85.

Hansen, John M. 1991. *Gaining Access: Congress and the Farm Lobby, 1919–1981.* Chicago: University of Chicago Press.

Kernell, Samuel. 1993. *Going Public: New Strategies of Presidential Leadership.* 2d ed. Washington, D.C.: CQ Press.

Landes, William M., and Richard A. Posner. 1975. "The Independent Judiciary in an Interest-Group Perspective," *Journal of Law and Economics* 18: 875–901.

Lizárraga, Daniel. 2000. "Negocian hoy reformas ministros y foxistas," *Reforma*, August 17.

Magaloni, Beatriz. 2003. "Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico." In *Democratic*

Accountability in Latin America, ed. Scott Mainwaring and Christopher Welna. New York: Oxford University Press.
North, Douglass, and Robert Paul Thomas. 1973. *The Rise of the Western World*. London: Cambridge University Press.
North, Douglass C., and Barry R. Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England," *Journal of Economic History* 49 (December): 803–32.
O'Donnell, Guillermo. 1999. "Horizontal Accountability in New Democracies." In *The Self-Restraining State: Power and Accountability in New Democracies*, ed. Andreas Schedler, Larry Diamond, and Marc F. Plattner. Boulder, Colo.: Lynne Rienner.
Prillaman, William C. 2001. *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*. London: Praeger.
Schatz, Sara. 1998. "A Neo-Weberian Approach to Constitutional Courts in the Transition from Authoritarian Rule: The Mexican Case (1994–1997)," *International Journal of the Sociology of Law* 26: 217–44.
Silva Meza, Juan. 2000. "La Corte y la defensa de la constitución." In *Once voces*, ed. Alberto Aragón Bolado. Mexico City: Suprema Corte de Justicia de la Nación.
Solomon, Peter H., Jr. 2002. "Putin's Judicial Reform: Making Judges Accountable as Well as Independent," *East European Constitutional Review* 11: 117–24.
Staton, Jeffrey K. 2002. "Judicial Activism and Public Authority Compliance: The Role of Public Support in the Mexican Separation of Powers System." PhD dissertation, Washington University.
———. 2004. "Public Support and Spin: Judicial Policy Implementation in Mexico City and Mérida," *Journal of Comparative Politics* 37, no. 1 (October).
Stone Sweet, Alec. 2000. *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
———. 2001. *Governing UIT Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
Suprema Corte de Justicia de la Nación. 2001. *Proyecto de la Ley de Amparo Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos*. Mexico City: Suprema Corte de Justicia de la Nación.
Torres, Mario. 2000. "Demanda SCJN 6% del presupuesto federal," *El Universal*, August 18.
Widner, Jennifer A. 2001. *Building the Rule of Law*. New York: W.W. Norton & Company.
Winkle, John W., III. 1990. "Judges before Congress: Reform Politics and Individual Freedom," *Polity* 22: 443–60.

PART IV

Crime and Society