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Judicial Policy Implementation in Mexico City and Mérida

Jeffrey K. Staton

Why do some of the world's constitutional courts challenge governmental authority over many kinds of policies, while others avoid conflict over particularly sensitive or salient political issues? Why do some elected officials immediately obey judicial resolutions that challenge their authority, while others find ways not to implement judicial decisions? These questions are important in understanding the role constitutional courts play in ensuring that elected officials respect a state's fundamental political rules.¹ If constitutional courts are unwilling to challenge governmental authority, or if public officials are unwilling to implement politically unfavorable decisions, the degree to which constitutional courts can serve as effective horizontal mechanisms of accountability will be considerably constrained. Despite the importance of both questions, much of the growing comparative scholarship on law and courts has sought to explain judicial behavior without addressing the reactions of government officials to adverse judicial decisions.² Consequently, scholars are left with a largely one-sided account of judicial politics that provides much empirical support for theories of judicial decision making but little support for theoretical conclusions about the implementation of judicial policy.

In contrast to this trend, recent work by Georg Vanberg integrates diverse studies of judicial activism and policy implementation by specifying what might be called a public enforcement mechanism for judicial orders, in which public support for courts and the related pressure constituents can place on their representatives may induce compliance with adverse judicial resolutions.³ On this account, public support also can provide the political cover courts require to take on sensitive political conflicts. Of course, this mechanism works only if people are sufficiently informed about the nature of the conflicts they are purported to enforce. Accordingly, Vanberg considers how the relative transparency of judicialized conflicts influences interbranch conflict.⁴

Despite Vanberg's important theoretical advance in simplifying diverse yet connected studies, his model leaves a number of issues underdeveloped. This article addresses two. First, public willingness to help enforce judicial resolutions and public capacity to impose significant costs on their representatives for instances of noncompliance are distinct concepts. They should be treated as such in both theoretical and empirical analysis. Second, if the kind of information concerning interbranch conflict to which people have

access affects their ability to enforce judicial decisions, both courts and elected officials might be expected to try to influence the way information is transmitted to the public. The information surrounding judicialized conflicts could thus be endogenous to the interactions between judges and political officials. This possibility complicates unidirectional causal arguments about the effect of information on the willingness of judges to challenge political authority and the willingness of public authorities to comply. It also suggests that political communication may permeate the politics of law in many of the same ways as it does politics in general.

These concerns can be developed through a comparative case study of the reactions of two Mexican executives to two highly visible resolutions of the Mexican supreme court. In the first case, President Ernesto Zedillo complied with a supreme court order within hours of its release. In the second, Yucatán Governor Víctor Cervera defied the court for nearly a month. The difference in their reactions captures precisely the kind of noncompliant governmental behavior thought to be a problem in Mexico. When there is a compliance problem, it is not that authorities never comply. Rather, authorities resist and delay. Their behavior distorts the rule of law and results in wasted judicial resources allocated to ensure compliance.⁵

Theories of Judicial Policy Implementation

There are three general explanations of compliance. Proponents of legitimacy theory argue that, because the coercive sources of judicial power are minimal, courts heavily rely on societal beliefs in their legitimacy in order to induce the proper implementation of their most disliked decisions.⁶ Judicial legitimacy is typically conceptualized as diffuse public support, or the degree to which people are committed to the institutional structure of the judiciary.⁷ Judicial decisions are followed to the extent that those asked to comply fundamentally support the institutional powers of the court resolving the conflict.

Scholars invoking communications theory highlight the ways judicial decisions are crafted and ultimately interpreted by those required to implement them. The most interesting proposition derived from this perspective is that specificity in the language used to describe a holding can constrain public authority reactions. In particular, unambiguous language decreases the degree to which public officials can develop creative interpretations of judicial resolutions that undercut the spirit of the court's intent.⁸

Other researchers have appealed to rational choice theory to explain compliance. The general proposition forwarded by these studies is that implementation can be best explained by considering the political costs and benefits associated with alternative choices over compliance.⁹ Specifically, these models have typically been decision theoretic. The authors do not consider the interdependency of choice, but rather evaluate how a single individual's decision changes as a function of a set of exoge-

nous parameters; that is, the individual under analysis makes a decision in a social vacuum. Such a model simply posits that compliance is a function of the relative costs and benefits associated with implementing an unfavorable decision. A testable hypothesis consistent with this approach is that public officials ought to be more willing to implement changes in relatively unimportant policies than in policies of significant importance. In other words, the propensity to comply with an unfavorable resolution ought to decrease with the benefits derived from the challenged policy.

Vanberg integrates these approaches in three ways. First, he recognizes that, if courts enjoy wide public support, then the public might be expected to help enforce their decisions. If people trust their courts to make good decisions and are committed to their institutional structure, they may be willing to punish their representatives for evading a judicial resolution. Second, Vanberg suggests that for the public to enforce judicial resolutions people need to be informed about and understand the substance of the conflicts courts resolve. A confused public or one that is entirely uninformed about a judicial holding can not be an effective source of enforcement. Thus, the transparency of the conflict—the amount of information available to the public and the clarity of the legal issue at stake—ought to increase the likelihood of judicial activism and compliance. Finally, Vanberg specifies a game-theoretic account of compliance that includes the normative concept of legitimacy. This addition both allows for courts to avoid noncompliance by strategically avoiding conflict and clearly demonstrates that a political theory can recognize the importance of normative constraints on human behavior and rationality within the same framework.¹⁰

As empirical evidence in support of his claims over implementation, Vanberg provides a detailed case study of an interaction between German Chancellor Konrad Adenauer and the federal constitutional court. The analysis suggests that strong public support for the court induced Adenauer to accept an unusually unfavorable resolution.¹¹ While other studies have considered the impact of constituency interests on implementation, this article is the first attempt to test Vanberg's model outside Germany.¹²

Despite Vanberg's important contribution, his model raises at least two issues. First, Vanberg conditions his expectations over judicial policy implementation on the costs of a public backlash for defiance, as perceived by elected officials. Of course, the public backlash parameter might be operationally defined in all of the following ways: the degree of trust people place in their constitutional courts; constituent opinion over the court's decision; the number of voters dissatisfied with their representative's response; the proximity and level of competition of a pending election; public protests or the threat thereof; and the public official's personal interest in maintaining an image as a supporter of the rule of law. While including a single cost parameter is an appropriate simplifying assumption for a general model, it conflates two distinct concepts in ways that might cloud an empirical test. In particular, distinct levels of public support may measure the willingness of constituents to defend their courts; however, they may not capture the capacity of citizens to impose the kinds of

costs on elected officials that will induce compliance. Even if a majority of constituents believe that the resolutions of their constitutional court ought to be immediately implemented, this majority may not be in a position meaningfully to punish noncompliance. Clearly, it can not if elections are rigged. Also, representatives are likely to be judged over multiple issue dimensions aside from the rule of law. In sum, public support and public capacity to impose significant costs on defiant officials are related but distinct concepts. Below, the willingness to punish, in addition to other factors, is controlled for, and it is shown how the expected difference in publicly imposed costs of defiance can affect implementation.

Second, Vanberg assumes that information, specifically the transparency of the question being considered by the court, is exogenous to the interaction he analyzes. However, since information is purported to be so important to the choices political officials make over compliance, should they not be expected to try to influence that information?¹³ This issue is critical. If elected officials are able to frame their legal conflicts effectively, they may be able to reduce the constituency costs associated with noncompliance. On the other hand, it is certainly possible for an official to raise the costs of noncompliance inadvertently by spinning a conflict in a particular way. In fact, Vanberg's own account of Adenauer's battle with the federal constitutional court details efforts by him to convince his constituents that particular court decisions could be disobeyed, an effort that seemed to increase rather than decrease opposition to his position.¹⁴ The spin Cervera and Zedillo placed on their respective conflicts could have influenced their respective costs of noncompliance, albeit in entirely different ways. It is important to consider information as likely being endogenous to judicial-executive relations.

The Zedillo and Cervera cases are analyzed through four hypotheses on implementation, all qualified by a *ceteris paribus* condition. The immediate implementation of a judicial resolution is more likely when, first, the issue's transparency is relatively high, second, the political importance officials assign to the issue under review is relatively low, third, public support for the court is relatively high, and fourth, the particular costs constituents can impose on their representatives are relatively high. These two cases are similar along all but one of the key theoretical dimensions: the costs Zedillo and Cervera could have plausibly expected to be associated with defying the supreme court.¹⁵ The difference in these costs can explain the variance in their reactions. Also, Cervera and Zedillo influenced the information surrounding their conflicts, and their efforts likely affected the political ramifications of alternative responses to the court's decisions.

The Zedillo Case

In the wake of the 1994 peso crisis the Mexican economy was strengthened by fifty-two billion dollars in loan commitments made by the United States, Canada, and

several international lending agencies. Using these funds, the secretary of finance and public credit, primarily through the National Banking and Securities Commission, attempted to ensure the viability of the country's banks.¹⁶ The secretary of finance and public credit's most politically controversial policy involved the assumption of debt from certain banks incapable of meeting their obligations. It did so through the Fund for the Protection of Bank Savings, a federal trust created in 1990. What made this policy controversial was that a number of the loans assumed under the fund were granted under questionable risk management standards and in some cases were illegal, made by bank managers to family members, friends, and themselves.¹⁷ Some of these loans were unrecoverable, and in March 1998 Zedillo's administration proposed transferring them to Mexico's general public debt.

As some of the irregular loans assumed under the fund involved bankers and industrialists closely connected to Zedillo's *Partido Revolucionario Institucional* (PRI), the political opposition in congress approached the proposal with much skepticism. Over the next year opposition party members in the chamber of deputies requested information on the internal structure of the fund. These requests were denied by Zedillo's administration, which cited provisions of the Law on Institutions of Credit limiting the release of financial information to the judicial and executive branches only.¹⁸

In September 1998 a chamber subcommittee hired Canadian Michael Mackey to audit the Zedillo administration's handling of the bank crisis. Before Mackey could complete his work, Carlos Cabal Peniche, the former president of Banco Unión, a failed national bank, announced that he had helped illegally to channel twenty-five million dollars into the 1994 PRI electoral campaign through a trust account opened by members of the PRI's executive committee and funded primarily by loans granted by Banco Unión to phantom companies affiliated with Cabal himself.¹⁹ These loans made up part of the unrecoverable debt set to be assumed by the congress. Although Zedillo denied knowledge of these transactions, Cabal claimed that the president had participated in the scheme directly. Cabal's allegations, true or not, lent a degree of specificity to the chamber's search for information on the nature of the Fund for the Protection of Bank Savings. Although Mackey cited legal support supposedly releasing the secretary of finance and public credit from its obligation to protect the secrecy of financial transactions, his request was definitively denied on July 9, 1999.²⁰

In response, the chamber moved a constitutional controversy claim against Zedillo and members of his cabinet. The court's August 24, 2000, decision held that "the interest safeguarded by the concept of fiduciary secrecy must not obstruct the Congress's [aforementioned] faculties when private debt is converted into public debt."²¹ The court required the president to compel the secretary of finance to deliver the requested data to the chamber within thirty days. Zedillo complied immediately, issuing an order to that effect within hours of the announcement.²²

The Cervera Case

The Yucatán State Electoral Council is the primary administrative authority responsible for the state's elections. The council is comprised of seven counselors, appointed by the twenty-five member, unicameral state legislature under a four-fifths supermajority voting rule. Officially registered political parties and nonprofit social organizations each may nominate up to three candidates.²³

On August 31, 2000, the fifteen delegates affiliated with the PRI voted to extend the current counselors' terms through the May 2001 election. The eight delegates from the *Partido Acción Nacional* (PAN) and two from the *Partido de la Revolución Democrática* (PRD) voted against the extension, leaving the PRI five votes shy of the supermajority requirement. Disregarding the voting rule, congress emitted a legislative decree approving the extension, and Víctor Cervera Pacheco, the state's PRI governor, published it without objection. In response, the state PRD executive committee moved a constitutional revision claim before the superior bench of the federal electoral tribunal in Mexico City. On October 12, the tribunal invalidated the decree and ordered the congress to ratify a list of candidates for a new election.

Instead of endorsing the fifty-nine nominees previously ratified for the first election, a committee chaired by majority leader Myrna Hoyos voted to amend the probative evidence necessary to satisfy the qualifications for State Electoral Council membership. After applying the new standards, the number of eligible candidates dropped from fifty-nine to fourteen, the exact number necessary to fill the seven counselor positions and their seven substitutes. Curiously, the only nominees to survive the cut were proposed by the PRI or social organizations affiliated with the PRI.²⁴ On October 16 Governor Cervera published the new standards in the official Yucatán *Diario*, and Hoyos moved that the congress vote on the proposed candidates. In light of the fact that the governor's publication of the new rules and the congress's final vote were set to take place on the same day, the nominating organizations were provided no opportunity to update their rejected proposals. The PAN and the PRD membership walked out of the legislative session, and the remaining nominees were elected unanimously by fifteen *priistas*, technically satisfying the supermajority requirement. In response, the PRD and the PAN appealed to the federal electoral tribunal. On November 15 the tribunal again struck down the congress's procedures, requiring Governor Cervera to take all necessary actions to ensure the resolution's proper implementation.

This time, neither the governor nor the congress responded to the tribunal. In fact, Hoyos claimed that the tribunal had itself violated the law.²⁵ For his part, Governor Cervera argued that the tribunal had violated Yucatán's sovereignty.²⁶ In mid December the tribunal selected its own electoral council and required the congress to administer oaths of office. The congress again refused to implement the decision.²⁷ On January 15 actuaries hired by the tribunal took the oaths of the federally imposed

counselors and demanded that Cervera order the secretary of finance to release to them thirty-eight million pesos. Not only were the funds not released, but scores of PRI activists denied the counselors access to the State Electoral Council's official building. Effectively, Yucatán had two electoral councils.

This state of affairs continued for nearly two months. On March 11 the congress approved a proposal initiated by Governor Cervera seeking to combine the membership of the two councils. The resulting legislative decree clearly evaded the federal electoral tribunal's resolutions; however, it was not an administrative act. Instead, it established a new legal order. The conflict thus lay outside of the tribunal's jurisdiction, and on March 14 it declared itself incompetent.²⁸

Immediately following the decision, the PRD, the PAN, and the Labor Party (PT) all filed claims with the supreme court seeking an order declaring the decree unconstitutional. On its face, the decree appeared to violate the federal constitution's prohibition of amendments to electoral laws within ninety days of an election. The supreme court's decision striking down the decree went further. Among other holdings, the court claimed that the decree itself, regardless of when it was passed, violated the very structure of Mexican federal government by attempting to evade a decision of a judicial body properly empowered to rule on the matter. The court required the governor to implement fully the previous federal electoral tribunal resolutions.

In response to a question about whether or not he would defy the supreme court, Governor Cervera responded: "How am I going to comply with the terms of a resolution if I don't know the terms?"²⁹ Days later, the governor questioned the legitimacy of the court's decision, noting that "this resolution deserves to be studied because it contains more political ingredients than juridical."³⁰ However, he did promise compliance. Yet by April 16, the deadline the court set for full implementation, the funds had not been released, retarding the new council's ability to prepare properly for the election. Cervera eventually ordered the funds released, but not until April 28, one month following the court's original decision, nearly two weeks after their transfer had been required, and only one month before the upcoming election.

Implementation

The Zedillo and Cervera cases were similar along all theoretical dimensions except the actual costs that their constituents could have imposed in response to noncompliance. These costs can explain the varying responses of the two executives. Although qualitative methods do not provide the precise measures of uncertainty offered by quantitative methods, it is no less important to address uncertainty in a qualitative study.³¹ Accordingly, at the end of this section possible sources of uncertainty that might temper the central causal inference drawn here will be addressed.

Transparency Both cases were highly covered by the media. National newspapers, magazines, radio, and television programs all reported on the political conflicts underlying the cases, the constitutional issues to be resolved by the court, the court's eventual resolutions, and the subsequent reactions of the government officials whose authority the court had challenged.³² Undoubtedly, Zedillo and Cervera could have reasonably expected their actions to be reported to their constituents. Additionally, the executive actions required in both cases were similar in substance, and they could not have been more easily comprehensible. The court did not provide either Zedillo or Cervera much room to evade compliance through some sort of creative interpretation. Either Zedillo would order his secretary of finance to turn over the information, or he would not. Either Cervera would order his secretary of finance to release the funds, or he would not.

Political Importance Political importance measures the official's sense of the policy benefit derived from the matter under judicial review. Here it describes what Zedillo and Cervera stood to gain from either winning a favorable judicial resolution or ignoring an unfavorable one. Both officials likely perceived the issues to be highly important.

The chamber of deputies did not formally accuse Zedillo of direct participation in the scandal concerning the Fund for the Protection of Bank Savings, even after the Banco Unión data were released, so it might be asked whether Zedillo cared at all about the decision to deny Mackey access. There are at least two reasons why Zedillo could have perceived the issue to be important. First, while he likely did not believe that the data would directly implicate him, it is likely that the president would have rather prevented the opposition from digging through a new mountain of financial information. Offering the opposition more information, even if Zedillo knew he was not involved, could have presented further opportunity for the construction of theories about how the president might have helped illegally fund his own 1994 campaign. Given Zedillo's strong interest in developing a legacy as a committed reformer, he must have wanted to avoid a prolonged investigation. Second, as Zedillo argued, he could have significantly disagreed with the constitutional claim raised by the chamber. The case raised an important issue about the separation of powers, and it is likely that Zedillo significantly valued the continued strength of the presidency over the legislature, especially in an area where the law plausibly empowered the executive branch to deny the request.³³

Clearly, this imputation of Zedillo's policy interests is speculative. However, there is an observable reason to believe that Zedillo put a great value on maintaining possession of the information, whatever the particular rationale happened to be. Zedillo's administration found increasingly creative ways to withhold the information from the chamber and did not release the data until compelled to by a supreme court order. This withholding, if nothing else, suggests that the president cared about maintaining control. If there was no policy benefit in denying Mackey access, then

Zedillo would have been expected to turn over the information upon the first request.

Finally, it might be argued that, while Zedillo may have valued the data before the election, Labastida's loss would have decreased his interest in maintaining control. Although the interests posited above would not be affected by the electoral fortunes of the PRI, if Zedillo was protecting the information in order to shield his copartisans or Labastida himself from further scandal, it is possible that Fox's victory could have reduced the policy importance of the denial. While plausible, the Banco Unión data did not implicate Labastida. Moreover, there appears to have been a debate within the PRI about how Mackey's request should have been handled, with some members arguing that failing to release the data was causing more harm to the PRI's already damaged image. The denial damaged the PRI's electoral chances by providing additional rhetorical fodder to reform-minded candidates. Unless Zedillo was attempting to engineer a PRI loss, the policy benefit of the denial should not have changed after the election.

There are at least three clear reasons why Governor Cervera was likely to perceive the issue at stake to be important. First, the preelectoral controversy had dominated the governor's public appearances and media coverage since his initial conflict with the federal electoral tribunal in October 2000. He had already defied the second highest court in the federal judiciary for six months prior to the supreme court's involvement in the case, and this defiance itself, independent of the underlying conflict, made the issue important. Second, the governor, as he argued, could have sincerely believed that Yucatán's sovereignty was under attack. Third, with a close election on May 27, votes mattered in a way they probably had not during the previous years of questionably fair electoral competition. While the federally imposed electoral council contained a majority of PRI members, it was not uniformly *ceverista*. Thus, some have argued that, the longer Cervera could delay the new council's ability to carry out fully its mission, the easier it would be for him to frustrate its attempts to ensure a fair election.³⁴

Public support Since the court decisions were issued within seven months of each other, it is likely that the court enjoyed similar levels of deep societal commitment to its institutional structure following both of them. Nevertheless, diffuse public support for the court may have been lower in Yucatán than in the republic as whole. The difference in Zedillo's and Cervera's reactions may be attributable to differences in the court's support. This conclusion would be consistent with expectations, but such an effect could not be disentangled from the one hypothesized to be associated with the perceived costs of noncompliance.

Ideally, the supreme court's national diffuse support should be compared with its diffuse support in Yucatán. Unfortunately, data for such a comparison were not accessible. However, measures of how *yucatecos* judged the supreme court's behavior in the Cervera case and of the supreme court's national approval rating only months after the Zedillo decision are available.³⁵ Both are measures of the court's specific support, a concept positively correlated with legitimacy.³⁶ Table 1 shows a

Table 1 Public Support for the Supreme Court

Opinion of Supreme Court in Yucatán controversy/Supreme Court national approval rating ^b	Percentage	
	Yucatán (May 2001)	National (December 2000)
Good, Very Good /Approve	52	50
Fair/Neither approve nor disapprove	14	21
Poor, Very Poor /Disapprove	17	7

Table 1. Comparison of support for Supreme Court in the Republic as a whole with its support in Yucatán. The table does not show percentages for "don't know/no response" for the Yucatán survey; it does not show percentages for "no response" in the national poll.

^a The question read, "What is your opinion concerning how the Supreme Court of Justice behaved during the pre-electoral conflict in Yucatán"

^b The question read, "What is your opinion of the Supreme Court?"

Sources: *Reforma*, "Encuesta estatal sobre las elecciones para gobernador de Yucatán," May 4-5, 2001. *Reforma*, "Monthly series." December 2-3, 2000.

comparison of public support for the supreme court following the two decisions.³⁷ In the Yucatán poll, 52 percent of respondents judged the court's behavior to have been good to very good during the preelectoral conflict. Comparatively, 50 percent of respondents in the national poll strictly approved of the court's job. While these results do not represent overwhelming public support, the court's support was relatively similar at the national and state levels. At the very least, if there is a difference, the supreme court might have enjoyed marginally more public support in the Cervera case than in the Zedillo case, in contrast to the problem identified above.

Public Costs of Noncompliance: Zedillo In his December 1994 inaugural speech, Ernesto Zedillo laid out a vision for a new kind of Mexican politics, in which the republic's laws would truly govern public policymaking.³⁸ Many Mexican presidents entered office noting similar societal desires. What makes Zedillo unique is that he actually proposed a set of fundamental political reforms supposedly aimed at creating better formal institutions to ensure the rule of law and dismantling informal institutions that overly concentrated power in the presidency.³⁹

The 2000 presidential election presented Zedillo with an opportunity to make good on his commitment to the rule of law. Indeed, seconds after the Federal Electoral Institute announced that Vicente Fox Quesada would likely be the next president, Zedillo appeared live from the presidential residence standing in front of a portrait of Benito Juárez and proclaimed his full support for the transition. The following day, Zedillo met with PRI state governors and asked that they all recognize

Fox's electoral triumph, blaming the loss on public fatigue with PRI governance.⁴⁰

Both Zedillo's reaction to the initial election results and his appeal to the party's state leaders were viewed disdainfully by many *priistas*, especially those who believed the president was attempting to build a personal democratic legacy at the expense of the party. Representative of this reaction, federal deputy Efrén Enríquez Ordóñez argued that Zedillo preferred to "leave a legacy to his children as the great democratizer" than to remain faithful to his party.⁴¹

The intra-PRI opposition to Zedillo continued to build in the weeks following the election. In fact, by July 21 five groups within the PRI were calling for the president's expulsion.⁴² Zedillo lacked much of whatever party support he had enjoyed over his *sexenio*. The time for him seriously to promote policy goals was over.

Whether or not defying the court might have resulted in some sort of public turn against a possible late term policy proposal, Zedillo would have been unable to promote one without party support. Additionally, by the time the court released its decision, Zedillo's candidate had already lost the presidential election, the first electoral defeat for a PRI presidential candidate in seventy-one years. Obviously, Zedillo faced no meaningful electoral constraints; he was already a lame duck. Did Zedillo face no public costs for defiance at all? Despite (or because of) his weakened political position resulting from the election, Zedillo continued to promote his message of a new Mexico.⁴³ Indeed, he had been championing the great transition for nearly two months at the time of the resolution. Although it is unlikely that the president's policy or electoral goals could have been affected by a negative public reaction to whatever decision he took, had he defied the court, he would have undoubtedly affected his legacy as a committed democrat. And this legacy was something that Zedillo valued greatly. Indeed, 50 percent of the president's press releases between July and September 2000 explicitly make reference to the accomplishments of his *sexenio*; 42 percent of those press releases are about Mexico's new democracy.⁴⁴

In the sense that a legacy is developed largely by public opinion, the president is likely to have perceived the costs associated with a negative public reaction to non-compliance to have been relatively large. An alternative way of conceptualizing these costs is to think about what Zedillo's legacy had to gain from compliance. In other words, by immediately issuing the order Zedillo could further develop his legacy. Had he defied the court, he would have forgone this important opportunity, and that missed chance can be conceptualized as a utility loss. Whether conceptualized as a direct blow to his legacy or as a missed opportunity to develop it further, Zedillo faced significant costs for failing to implement the decision. Zedillo's response evinces an understanding of the likely incongruity of championing a transition to democracy while defying the supreme court.

Public Costs of Noncompliance: Cervera Unlike Ernesto Zedillo, Víctor Cervera was in no danger of affecting an image as a committed democrat. His legacy could not

have been greatly damaged by defying the court, nor would his legacy be greatly enhanced by complying. The governor was widely viewed as a traditional PRI dinosaur. In contrast to Zedillo, he had significantly centralized power and thus polarized Yucatán's political landscape. In Yucatán one was either with or against the governor.

In spite of having little to lose in terms of a democratic legacy, Cervera did confront possible electoral constraints. At the time of the court's resolution, the May 27 election had yet to be contested by his chosen successor, and a majority of his constituents believed that the supreme court had behaved appropriately during the conflict. Cervera clearly cared about the election. He had fought strong opposition inside the state PRI successfully to promote the gubernatorial candidacy of his longtime friend Orlando Paredes Lara. Also, the election was set to be the closest in Yucatán's history.⁴⁵ Accordingly, Cervera may have faced serious electoral costs for defiance.

The real question is how much electoral support would Cervera have likely lost as a result of his delayed response to the supreme court. The answer is, very little, for at least two reasons. First, given the kind of politician Cervera was and his five-month defiance of the federal electoral tribunal, his reaction to the court's order was not unexpected by *yucatecos*. Cervera's reaction would probably have been perceived as unacceptable mostly by voters already predisposed to vote against his candidate. Cervera would have been unlikely to perceive significant costs associated with non-compliance. Indeed, as suggested by the data in Table 2, party identification was strongly related to opinion over Cervera's behavior in the preelectoral conflict.⁴⁶ Among those respondents in the *Reforma* poll who were likely to vote in the May election, just over 73 percent of PRI identifiers rated the governor's behavior as good to very good; only 8 percent rated the governor's behavior as poor to very poor. In contrast, just over 68 percent of *panistas* judged his behavior to have been poor to very poor. The most interesting result concerns the split in opinion among independent voters: 42 percent rated the governor's behavior as good to very good, and 36 percent rated it as poor to very poor. This result suggests a second reason why the governor likely viewed the costs associated with noncompliance as negligible.

Because of the link between party identification and public opinion concerning Cervera's behavior, the governor's reaction was likely neither to lose him much support from his partisans nor to gain him opposition support. However, there was a significant number of independent identifiers, and support for Cervera among independents was split. Still, 65 percent of independents specified a preference in the governor's race. How did undecided, likely voters perceived Cervera's behavior? Cervera's support was actually quite strong among those respondents who were likely to vote but who had not chosen a candidate by May 5. Of undecided likely respondents, 59 percent rated the governor's behavior as fair to very good, while only 24 percent rated his behavior as poor to very poor. Thus, the voters most likely to change their minds largely approved of Cervera's behavior. Unlike Zedillo, Cervera faced little

Table 2 Public Support for Victor Cervera by Partisan Identification

Opinion ^c	Percentage		
	PRI	PAN	Independent
Good/Very good	73.5	12.0	42.4
Fair	11.0	13.5	10.6
Poor/Very poor	8.1	68.4	36.4
Don't know/No response	7.4	6.0	10.6
N	136	133	66

Table 2. Distribution of responses among likely voters to question asking for respondent's opinion over the role of Victor Cervera in the Yucatán pre-electoral controversy. Since less than 2% of respondents identified with the PRD, these observations are not reviewed here.

^cThe question read, "What is your opinion concerning how Victor Cervera behaved during the pre-electoral conflict in Yucatán?"

^dParty Identification: "In general, do you consider yourself *priista*, *panista* or *perredista*? Very or somewhat?" Measure reported here collapses strong and weak identifiers.

Source: Reforma, "Encuesta estatal sobre las elecciones para gobernador de Yucatán." May 4-5, 2001.

cost in defying the court. The electoral costs were marginal, and he could not have seriously affected his democratic legacy by ignoring the order.

Uncertainty

Three possible causes of uncertainty for the inference over the impact of perceived costs on compliance should be highlighted. First, the public support data for Cervera reported in Table 2 come from a poll taken a week after the governor had delivered the requested funds to the State Electoral Council. It is possible that respondents would have reported lower levels of support had the poll been taken earlier. However, the argument is about the distribution of support for Cervera. Thus, it is necessary to ask whether or not the observed support would have been lower across all respondents had *Reforma* conducted the survey before final implementation. For example, undecided voters may have raised their support for the governor relatively more than other voters in response to his order to transfer the funds. In this case, Cervera would surely have faced high costs for his continued noncompliance. Additionally, the item used to measure support for the governor actually measures respondent opinion about Cervera's behavior over the entire conflict, not just about

his response to the supreme court. Thus, it is not possible to disentangle public opinion on Cervera's reaction to the federal electoral tribunal completely from opinion about his reaction to the supreme court. Unfortunately, because of data restrictions, neither concern can be fully addressed.

Second, the poll on national support for the supreme court was taken in early December 2000, roughly three months after the decision. This timing raises a question about whether or not the responses reflected opinions over supreme court behavior in late August. Nevertheless, the Zedillo resolution was arguably the court's most significant, and it is reasonable to assume that December opinions were affected by it. More seriously, the poll was taken two days after Fox's inauguration, and the transition likely boosted opinions on all branches of Mexican government. There is reason to believe that support for Fox and support for the supreme court were correlated, since job approval ratings for the congress, the president, and the supreme court fell at similar rates during 2001–2002.⁴⁷ Indeed, by February 2002 only 39 percent of respondents to *Reforma's* national poll reported high to very high job approval ratings for the supreme court. The crucial issue is whether or not support for the court varied between the nation as a whole and Yucatán, and it is certainly possible that the court's support in Yucatán had fallen, as well. Since there is no corresponding Yucatán poll in February 2002, there is no way to tell.

Third, it might be argued that the real explanation for the variance in executives' responses is that Zedillo, and not Cervera, was personally committed to the rule of law and never once considered delaying the implementation of the court's decision. Clearly, evidence suggesting that Zedillo privately considered a delay but was dissuaded by a possible negative public reaction would be sufficient to dispel such a concern. In the absence of such evidence, there still may be reason to believe that defying the court was a theoretically possible action available to the president. Indeed, respected experts on Mexican politics have argued that Zedillo, despite his legacy, was not always fully committed to the rule of law. Reviewing his role in corruption investigations, Levy and Bruhn argue: "Even in the more sober Zedillo administration...selection of anticorruption targets appears to follow the president's own political logic (including maintaining legitimacy internationally) more than the independent logic of a judiciary."⁴⁸ Although Zedillo had helped build the institutional structure of the new supreme court, the Fund for the Protection of Bank Savings decision represented the first time the court directly challenged the president's authority in a case of such significance. In the same way that Thomas Jefferson might have considered defying John Marshall or Richard Nixon might have considered defying Warren Burger, Zedillo could have at least considered refusing to deliver the data, especially if Levy and Bruhn's contention about the president's respect for the judiciary is correct.

Influencing Information

In order to consider how reasonable it is to assume that information is exogenous to the implementation process, it is necessary to describe how Zedillo and Cervera framed their conflicts. Framing attempts may have different effects on the costs of noncompliance. The discussion of these two cases makes this point clear. Zedillo's effort to influence information surrounding his case began long before the conflict was judicialized. Interestingly, the argument he developed in the conflict with the chamber could have served to increase the costs of defying the supreme court. In contrast, Cervera's attempts to influence information began in a case already judicialized, and his spin could have decreased the costs of noncompliance.

Zedillo and Information From the chamber of deputies' first request, Zedillo and his secretary of finance claimed to be statutorily constrained from releasing the information on the suspected trust accounts. In particular, they argued that to meet the chamber's requests they would have to violate the privacy rights of all contributors to the trust, not just Carlos Cabal. Although Mackey cited a valid exception to the banking privacy statute, his requests were not specific enough to meet the statutory standard. Thus, Zedillo attempted to frame the issue for his constituents as a purely legal conflict over a distinct statutory construction.⁴⁹ The president's refusal to turn over the requested documents therefore had nothing to do with the possibility that the information sought by the congress might implicate him in an electoral scandal; rather, it was about protecting investor confidence in the Mexican banking sector. In light of the recent collapse of Mexico's banks, this argument was not implausible.

Once the decision was released, the president turned a clear setback into an opportunity to highlight further his commitment to the rule of law. Within hours of the court's announcement, Zedillo emitted a press release promising to comply in full. Moreover, he characterized this promise as another step his administration would take toward developing a fully consolidated democracy. In addition to promising to turn over the requested information, Zedillo expressed his long commitment to the rule of law and the separation of powers.⁵⁰

Zedillo's effort to influence the information surrounding his case was aimed at legitimating his decision within the existing legal structure. His argument was about the law. This approach was reasonable in the context of a conflict with the congress. However, once the case became judicialized, this spin likely placed a serious constraint on Zedillo's set of possible reactions. Having already developed a position that drew authority from the republic's own institutional structure, Zedillo could not have easily argued that a decision of the supreme court, the fundamental authority on interpreting Mexican law, could be defied. In short, the spin he developed before the judicialization of the conflict may have increased the costs of noncompliance by

making anything but immediate compliance appear fantastically inconsistent with the approach to the conflict he had already developed.

Cervera and Information In contrast to Zedillo, Cervera began his public statements over the controversy in a fully judicialized conflict. Cervera made no effort to develop an argument based in the intricacies of the existing legal structure. Rather, he challenged the very nature of Mexican federalism by arguing that the federal electoral tribunal lacked the power to install its own electoral council and later that the supreme court's decision was influenced by political factors. The central public relations strategy pursued by the governor was to frame the problem in terms of a regional-central divide, a divide that was quite salient in Yucatán. Once the supreme court issued its resolution, there was nothing particularly incongruous about his argument for Yucatán state sovereignty and defiance of the court.

From the beginning, Cervera contended that the federal electoral tribunal had overreached its jurisdiction by continually interfering with the local congress's work. In early January 2001 he hosted eleven PRI governors and PRI national leader Dulce María Sauri in Mérida to discuss the relationship between the federal government and the states and to win their support for his battle with the tribunal. At the close of the meeting, he reminded his guests that "it is the obligation of all state authorities to keep watch over individual state sovereignty."⁵¹ This effort to frame the conflict in terms of state sovereignty was calculated. Given his constituents' strong sense of regional identity, the appeal was aimed at precisely the right people.⁵² Indeed, nearly 50 percent of respondents in the *Reforma* poll considered their personal identity to be *yucateco*. Only 29 percent considered themselves *mexicano*. Moreover, nearly 38 percent of respondents agreed with the statement that Yucatán ought to be an independent state. Among those respondents, 71 percent judged Cervera's behavior during the preelectoral conflict to have been fair to very good.

The governor's attempt to frame the conflict in terms of the regional-central divide likely helped lower the possible costs associated with noncompliance. Despite the fact that many *yucatecos* supported the supreme court's decision, the governor may have maintained his own support by linking his position to the strong sense of regional autonomy shared by his constituents. Thus, Cervera may have communicated his way out of much of the constraints supportive publics can impose on recalcitrant executives.

Conclusion

Why do some elected officials immediately implement the decisions of their constitutional courts, while others delay and defy? While Vanberg's model nicely integrates an important set of insights from relatively diffuse studies, it leaves a number of

issues unresolved. First, the willingness and capacity of the public to enforce judicial decisions are distinct concepts and might remain so analytically. While the supreme court enjoyed significant support in Yucatán, the distribution of political support for Cervera was such that he had little to fear from a public backlash in response to his defying the order. The same can not be said for Zedillo, who faced significant public costs had he defied the court. In the end, because the theoretical model is multivariate, additional tests will likely require multiple observations in order to get systematic control over alternative causal variables. However, operationalizing the constituent-based costs of noncompliance will be tricky in a large-*n* study. While data on diffuse public support or specific public support for individual decisions are better than no measure of the costs associated with noncompliance, they are probably not enough, nor would they accurately reflect the distinction between willingness and capacity to defend a court. Voters make choices based on a number of issues in addition to the ways their representatives interact with their constitutional court. Additionally, elections are not held every week. To the extent that memories are short, public enforcement may break down. Also, there are costs associated with public backlashes that are not electoral. When elected officials actually care about how they are remembered, even if voters can not directly affect their electoral or policy interests, they may be able to exercise a measure of control over their behavior. Finally, elections do not always work, and even when they do, elected officials have to believe that they will lose support in ways that matter in order to perceive significant costs associated with any decision. While large data sets can be helpful, data restrictions may make small-*n* studies of public enforcement particularly useful.

Second, information may be endogenous to interbranch relations. Consideration of information as exogenous may be helpful when asking particular kinds of research questions, but it does not mean that information is actually exogenous. In fact, since framing issues is what good politicians do well, it should come as no surprise that they attempt to frame their legal conflicts and in some cases do so effectively. It is clear that both Ernesto Zedillo and Víctor Cervera tried to control the information surrounding their conflicts. Still, good politicians sometimes fail to spin issues successfully or, as the Zedillo case suggests, choose a frame that suits one conflict yet is ultimately ill suited for another. Future theoretical analysis might consider the constraints that institutions, like judicial review, place on politicians when they attempt to develop a coherent message. Further, judges, like politicians, have incentives to use the media if information really is important.⁵³ Future research also might consider the conditions under which judges themselves are likely to enter public relations battles. Moreover, scholars might consider what happens when judges and politicians battle over how to frame a conflict. Are judges or politicians better able to shape a political conflict? While the conclusions on political spin for these two cases are only suggestive, they suggest a number of fruitful avenues of research.

NOTES

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1. See Guillermo O'Donnell, "Horizontal Accountability in New Democracies," *Journal of Democracy*, 9 (July 1998), 112–26.

2. Pilar Domingo, "Judicial Independence: The Politics of the Supreme Court in Mexico," *Journal of Latin American Studies*, 32 (2000), 705–35; Gretchen Helmke, "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy," *American Political Science Review*, 96 (June 2002), 291–304; Matias Iaryczower, Pablo T. Spiller, and Mariano Tommasi, "Judicial Decision Making in Unstable Environments: Argentina 1938–1998," *American Journal of Political Science*, 46 (October 2002), 699–716.

3. Georg Vanberg, "Establishing Judicial Independence in West Germany: The Impact of Opinion Leadership and the Separation of Powers," 33 (April 2000), 333–53; Georg Vanberg, "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review," *American Journal of Political Science*, 45 (April 2001), 346–61.

4. Vanberg, "Legislative-Judicial Relations," p. 347.

5. Arturo Vizcaino Zamora, Mexico City, June 10, 2000. All but three instances of noncompliance investigated by the supreme court during the 1990s ended in the implementation of the decision. A summary of the data on noncompliance claims in amparo suits is available from the author upon request. Although there is considerable variance in the time authorities delay, all cases that were not dismissed by the court ended in compliance.

6. See James L. Gibson, Gregory A. Caldeira, and Vanessa A. Baird, "On the Legitimacy of National High Courts," *American Political Science Review*, 92 (June 1998), 343–58.

7. David Easton, *A Systems Analysis of Political Life* (New York: Wiley, 1965).

8. See James F. Spriggs, "The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact," *American Journal of Political Science*, 40 (November 1996), 1122–51.

9. See Robert Stover and Don Brown, "Understanding Compliance and Noncompliance with the Law: The Contributions of Utility Theory," *Social Science Quarterly*, 56 (1975), 363–75; John A. Clark and Kevin T. McGuire, "Congress, the Supreme Court, and the Flag," *Political Research Quarterly*, 49 (1996), 771–81.

10. See Randall L. Calvert, "Rationality, Identity, and Expression," in Ira Katznelson and Helen Milner, eds., *Political Science: The State of the Discipline*, 3rd ed. (New York: W. W. Norton and American Political Science Association, 2002).

11. Vanberg, "Establishing Judicial Independence," pp. 341–48.

12. See Clark and McGuire, p. 776; and Richard M. Johnson, *The Dynamics of Compliance: Supreme Court Decision-Making from a New Perspective* (Evanston: Northwestern University Press, 1967).

13. Thomas E. Nelson and Donald R. Kinder, "Issue Frames and Group-Centrism in American Public Opinion," *Journal of Politics*, 4 (November 1996), 1055–78.

14. Vanberg, "Establishing Judicial Independence," pp. 344–45.

15. On qualitative designs for testing multivariate theories, see Gary King, Robert Keohane, and Sidney Verba, *Designing Social Inquiry* (Princeton: Princeton University Press, 1994), pp. 140–41.

16. Isaac Katz, "The Crisis of the Mexican Banking System," *Western Centre for Economic Research Information Bulletin*, 41 (October 1996), 1–8.

17. Michael W. Mackey, "Informe de Michael W. Mackey en la evaluación integral de las operaciones y funciones del Fondo Bancario de Protección al Ahorro, FOBAPROA y la calidad de supervisión de los programas del FOBAPROA de 1995 a 1998 (Julio de 1999)," *Gaceta Parlamentaria, Cámara de Diputados*.

18. Ley de Instituciones de Crédito, Título Sexto, Artículo 117.

19. Andres Oppenheimer, "Banker Tells of Huge PRI Donations: Fugitive Says \$25 Million Campaign Gift 'Normal' in Mexico," *Miami Herald*, May 29, 1999, p. 16A.
20. Ley de Protección al Ahorro Bancario, Artículo 7, transitorio. On the response of the secretary of finance and public credit, see Comunicado de prensa 71/99, Secretaría de Hacienda y Crédito Público, Unidad de Comunicación Social.
21. Semanario Judicial de la Federación y su Gaceta Tomo: XII, Agosto de 2000, Tesis: P/J. 87/2000 Página: 980.
22. Comunicado de prensa 0007/2000, Comisión Nacional Bancaria y de Valores.
23. Article 90, Código Electoral del Estado de Yucatán (CEEY).
24. Juicio de Revisión Constitucional, SUP-JRC-440/2000 and SUP-JRC-445/2000 Acumulados (113).
25. Luis A. Boffil Gómez, "Legisladores del PRI pretenden prolongar los poderes en Yucatán," *La Jornada*, Internet Edition, Nov. 17, 2000.
26. Luis A. Boffil Gómez, "El Congreso de Yucatán desafía a tribunal federal," *La Jornada*, Internet edition, Nov. 18, 2000.
27. Luis A. Boffil Gómez, "Reinstala el Congreso de Yucatán a consejeros invalidados por el Trife," *La Jornada*, Internet edition, Jan. 5, 2001.
28. Acuerdo 13/2001, Sala Superior 14 March 2001.
29. Gustavo Castillo García, "Invalida la Suprema Corte el *superconsejo* electoral yucateco," *La Jornada*, Internet edition, Apr. 8, 2001.
30. Luis A. Boffil Gómez, "Descarta Cervera un nuevo desacato; la fecha de comicios, inamovible: Creel," *La Jornada*, Internet edition, Apr. 10, 2001.
31. On addressing uncertainty in qualitative studies, see King, Keohane, and Verba, pp. 31–32.
32. It is beyond the scope of this article to provide a comprehensive list of citations. A search for articles on the Fund for the Protection of Bank Savings during 2000 at *La Jornada's* web site under "FOBAPROA" generated 1,305 hits. A similar search under "Gobernador Cervera" during 2001 generated 587 hits. Even a search under "Myrna Hoyos" generated seventy-five. In contrast, a search under "Anatocismo" or "Capitalización de intereses," terms used by the press to describe another politically salient supreme court decision, generated at most twenty-nine hits during the time the case was covered. For a list of front page articles on the cases, please contact the author.
33. See Andrea Becerril, "El expediente, nuevo motivo de enojo para priistas," *La Jornada*, Aug. 25, 2000.
34. Personal communication with Alfredo Rodríguez y Pacheco, president of the PAN State Executive Committee, June 26, 2001, and Efraín Poot, a political anthropologist in Mérida, June 27, 2001.
35. These data are still not ideal. I would like to compare national support for the court's Zedillo decision with state support for the court's Cervera decision. Unfortunately, data restrictions obviate such a comparison. Still, the results suggest that the court was more or less equally supported in both cases.
36. Gibson, Caldeira, and Baird, p. 355.
37. The data were obtained from surveys conducted by the newspaper *Reforma*. Information on the sampling design can be obtained at www.reforma.com/encuestas or by contacting the author.
38. Ernesto Zedillo Ponce de León, "Inaugural Address, December 1, 1994.
39. See Jeffrey Weldon, "Political Sources of *Presidencialismo* in Mexico," in Scott Mainwaring and Matthew Soberg Shugart, eds., *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1998); Luis Rubio, "Coping with Political Change," in Susan Kaufman Purcell and Luis Rubio, eds., *Mexico under Zedillo* (Mexico City: CIDAC, 1998).
40. Fabiola Guarneros, Francisco Arroyo, and Jorge Teherán, "Se cansó la gente del PRI, dice EZ a gobernadores," *El Universal*, Internet edition, July 4, 2000.
41. Reported in Francisco Arroyo, "'A la basura,' malos líderes del tricolor," *El Universal*, Internet edition, July 9, 2000. It should be noted that the PRI was clearly divided over how to deal with Zedillo. Juan Arvizu Arrija, "Demanda Zedillo civilidad política," *El Universal*, Internet edition, July 26, 2000.

42. This request was denied by the honor committee of the CEN. See Francisco Arroyo, "Rechaza Comisión de Honor expulsar a Zedillo y Salinas," *El Universal*, Internet edition, Aug. 3, 2000.

43. Mario Torres, "Hoy vivimos una normidad democrática," *El Universal*, Internet edition, July 13, 2000.

44. See http://zedillo.presidencia.gob.mx/pages/f_arch_comun.html.

45. Joseph L. Klesner, "The 1998 Mexican State Elections: Post-Election Report," *Western Hemisphere Election Studies*, 17 (Center for Strategic and International Studies, 1998). Recent state electoral results can be found at <http://www.pan.org.mx>.

46. Under a variety of multivariate specifications, the differences among PRI, PAN, and PRD identifiers are consistently statistically significant. Since support for Cervera is not being tested, the results are not presented here. They are available upon request.

47. Data provided by *Reforma* to the author are derived from the same series used to generate national support for supreme court cited in the text above.

48. Daniel C. Levy and Kathleen Bruhn, *Mexico: The Struggle for Democratic Development* (Berkeley: University of California Press, 2001), p. 137.

49. It is likely that Zedillo's argument was intended for public consumption, rather than to convince fellow *priistas*. After all, he was issuing press releases and giving speeches, rather than simply holding a meeting of national leaders, which he did to help convince party leaders to respect the election.

50. Comunicado Presidencial 2371.

51. Luis A. Boffil Gómez, "En Yucatan, 11 gobernadores priistas dan su respaldo a Cervera Pacheco," *La Jornada*, Internet edition, Jan. 8, 2001.

52. On Yucatecan identity, see Allison Greene, "Cablevision(nation) in Rural Yucatán: Performing Modernity and *Mexicandiad* in the Early 1990s," in Joseph Gilbert, Anne Rubenstein, and Eric Zolov, eds., *Fragments of a Golden Age: The Politics of Culture in Mexico since 1940* (Durham: Duke University Press, 2001).

53. See Richard Davis, *Decisions and Images: The Supreme Court and the Press* (Englewood Cliffs: Prentice-Hall, 1994).