

Estimados colegas:

El texto que envió para el seminario es parte de un proyecto más amplio, aunque la idea es que este texto se convierta en un artículo independiente. Es una versión muy preliminar, pero espero que las líneas generales sean lo suficientemente claras para discutirlos. Como verán hay todavía mucho por hacer, por lo que agradeceré no solo sus críticas sobre lo que ya está planteado sino también sus comentarios y sugerencias sobre cómo abordar los desafíos que siguen.

Un saludo,

Julio Ríos

**Authoritarian Legacies:
Persistent Patronage Networks and the Erosion of Merit-Based Judicial Selection in
Mexico, 1917-2017.**

Abstract

During Mexico's transition to democracy, at the end of 1994, a Judicial Council was created with the explicit aim of establishing a merit-based system for the selection, monitoring, and promotion of judges at all levels of the federal judiciary. However, a series of indicators show a divergence between the formal merit-based judicial career and the actual practice of appointments and promotions, which is biased in favor individuals with connections to sitting judges and persons already working in the federal judiciary. Why? What is the source of the divergence between the formally merit-based career and the actually biased hiring practices? This paper argues that patronage networks formed during the authoritarian period, when the Supreme Court hand-picked lower court judges, have persisted under the democratic regime eroding the meritocratic selection system. Based on archival data, and on a unique dataset on nepotism within the judiciary, the paper uncovers the patronage networks, and aims at showing their persistence and effects on the performance of the Judicial Council set to select judges on merit since 1995. Leveraging a relational perspective, the paper offers a mechanism of transmission and reproduction of enduring authoritarian practices despite democratic efforts to uproot them.

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Merit-based systems for hiring and promotion in public sector employment are foundational for effective, efficient, and legitimate public administration (e.g. Carpenter 2001; Brans and Hondeghem 1999; Grindle 2010; Pardo 2005; Longo 2004). Procedures that avoid the appearance of corruption, nepotism, and impropriety are especially important in law enforcement, dispute resolution, and the administration of justice. The selection and promotion process in the judiciary creates incentives that can impact the independence and performance of the courts. Although there are many such methods operating around the world, there is consensus on the importance of competitive, merit-based selection mechanisms and the reliance on formal training and qualifications in law (e.g. examinations, professional record). Judicial councils and appointments commissions are an increasingly common set of institutions aimed at establishing merit-selection procedures: in 1985 only about 10% of the world's jurisdictions used judicial councils to select judges by 2015 such bodies were involved in appointments in over 60% of jurisdictions (Garoupa and Ginsburg, 2015: 110).

Mexico is part of this trend. The Mexican government created a judicial council at the end of 1994 with the explicit aim of establishing a merit-based system for the selection and promotion of judges at all levels of the federal judiciary. However, existing procedures fail to deliver results approaching this ideal. A series of indicators show a divergence between the formal merit-based judicial career and the actual practice of appointments and promotions, which is biased in favor individuals with connections to sitting judges and persons already working in the federal judiciary. For one, nepotism is prevalent in the federal judiciary: in half of the judicial circuits over 50% of judges have at least one close family member working *in the same circuit*,¹ and in some circuits this figure approaches 80%. Family members working in the judiciary is not bad *per se* provided that everyone passed merit examinations. However, only judgeship positions require a merit examination. Moreover, not everyone can apply to become a judge: 87% of the calls to register for the exam require to be already working within the federal judiciary. The bulk of judges' relatives (93%) start working in a non-meritocratic relatively low level position but then become eligible to participate in a contest to become judges themselves (Ríos-Figueroa 2018).

The argument in this paper is that the divergence between the merit-selection ideal and the actually biased practices go further and deeper than a merely flawed design of the judicial career. Specifically, I argue that the answer to the puzzle lies in the persistent effects of patronage networks created from 1917 to 1994, when the Supreme Court hand-picked lower court judges. The patronage networks are both a resource through which certain groups consolidated their power within the federal judiciary and also the mechanism of transmission of practices of the authoritarian past into the democratic present. In other words, the pattern of relations sustained by the patronage networks under the authoritarian regime (the *social structure* in social theory terms, see e.g. Sewell 1992) is what persists and undermines the meritocratic-selection ideal where family or other connections should not be relevant to be hired or promoted. By drawing from relevant literatures in authoritarian legacies, institutional change, and network analysis the

¹ By “close” I mean consanguineous relatives up to the fourth degree (i.e., up to first cousins)

paper aims to provide a clear and measurable mechanism of the persistence of past practices rooted in an authoritarian regime based on the patterns of relations sustained by patronage networks.

The remainder of the paper is divided in four parts. The first part briefly describes the judicial selection process in Mexico across the authoritarian (1917-1994) and the democratic (1995-2017) periods. The second part develops the hypotheses on the creation and consolidation of the patronage networks under authoritarianism and of the persistence of the set of relations that they sustained under democracy. The third part is devoted to the data and methods used to test the hypotheses showing the results available so far. The fourth part briefly concludes.

I.- Judicial Selection in Mexico, 1917-2017

The Mexican Constitution of 1917 granted the Supreme Court the power to appoint, oversee, and promote federal district and circuit court judges. However, for almost eight decades the organic laws of the judiciary did not further detail how the justices should fulfill this capacity nor offered any other guidelines relative to the judicial career. To fill this void, the Mexican justices tried different methods and eventually one proposal –taking turns among justices to fill vacancies– took hold and over time developed into an informal institution known as the ‘Gentlemen’s Pact.’ As this patronage method of judicial selection consolidated, justices became the heads of networks known colloquially as their ‘sheep pens’ (*corrales*) made up of themselves and their appointees. The birth and development of the ‘Gentlemen’s Pact’ and of patronage networks was rocky and non-linear but by the mid-1970s both were clearly established and functioning throughout the federal judiciary (Pozas-Loyo and Ríos-Figueroa 2018).

As shown in **Figure 1** the number of district and circuit courts skyrocketed from 1975 onwards, especially after 1987 due to an amendment that gave the Supreme Court the power to create new courts and tribunals (this was previously done legislatively through reforms of the organic law of the judiciary). The sudden increase in vacancies consolidated the ‘Gentlemen’s Pact’ as an informal institution. Specifically, by the end of the 1970s the taking of turns became the standard procedure for nominations (before this date there were occasional debates and alternative suggestions for selecting judges), the number appointments in which the name of the appointer and the name of the appointee are explicit approaches and stays at 100% as well as the percentage of unanimous votes approving the appointment.²

² The reconstruction of the genesis and consolidation of the Gentlemen’s Pact can be found in (Pozas-Loyo and Ríos-Figueroa 2018). The figures are based on archival data obtained through a thorough search of the Mexican Supreme Court Archives. Specifically, we read the minutes of the so-called ‘Secret Sessions of the Supreme Court’ that were the sessions during which the court discussed administrative matters, from the very first session of the Court in April 1917 to the last session before the creation of the Judicial Council in December of 1994. We located the discussions related to the appointments of district and circuit court judges, and coded the justice who proposed a name to fill a vacancy (when available, because in some discussions there was not any explicit proposal by one justice), the name of

Figure 1.

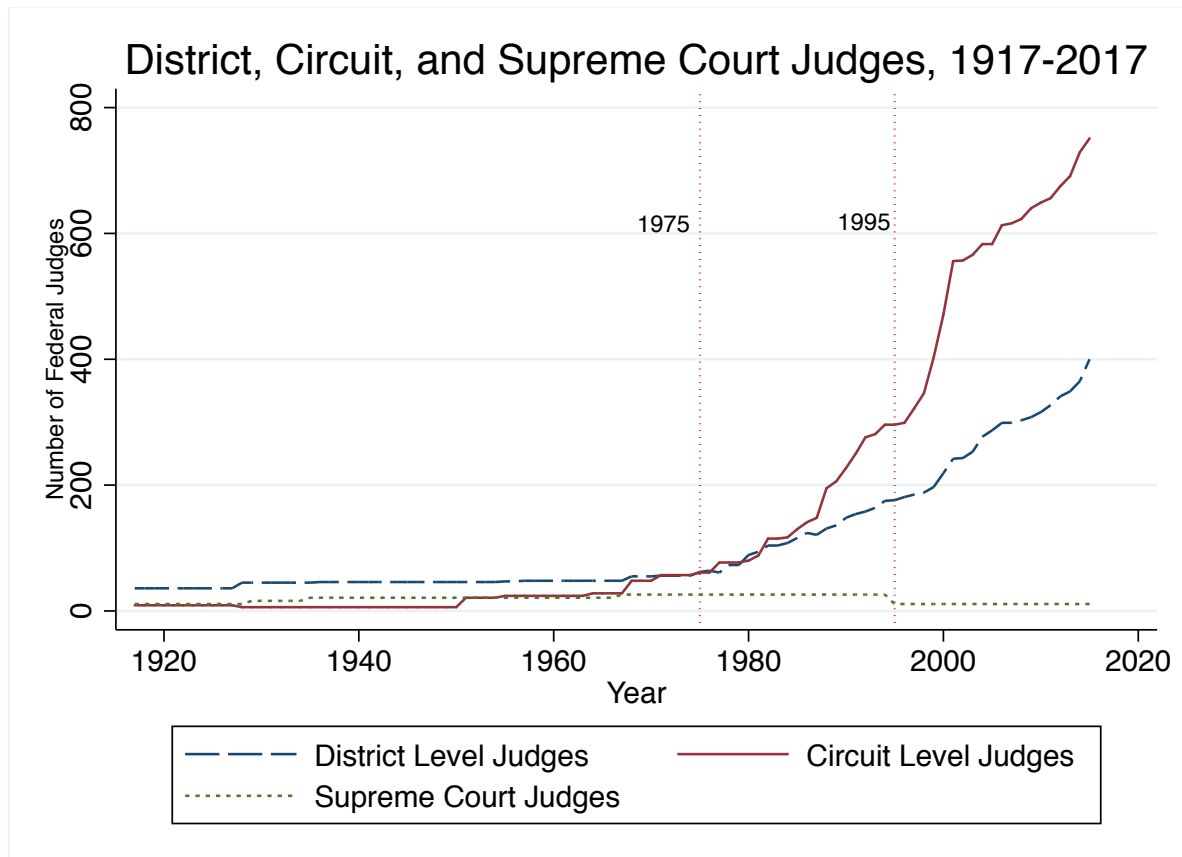


Figure 1. Shows the number of positions for judges at each level in the judiciary for each year based on the official number of courts at each level (and whether the court is composed of a single judge or a panel of three judges). Because the positions may or not be filled at a specific point in time, the actual number of judges per year may be different. Source: Annual Reports of the Supreme Court.

During this period, from 1976 until 1994, scholars point out a transformation in the nature of the exchanges between supreme and lower court judges. Specifically, it has been argued that until the mid-1970s the patronage system of selection operated under a ‘mentorship’ model (Cossío, 1996) implying that justices used to fill vacancies from a pool composed of their students, their clerks, and other judicial officials with experience in the workings of the judiciary. However, from 1976 onwards ‘negative’ exchanges between justices and their appointees became more common (cfr. Carpizo, 2000; see also Cossío, 1996), and this is observable in increasingly common corruption scandals.³ The transformation of the patronage system of judicial selection

the appointee, the position (i.e. district or circuit court judge), and the vote of the Supreme Court (i.e. unanimous or not) on the proposal. More details on the data can be found in the third section of the paper.

³ For instance, in 1976 federal judges were linked to a drug-trafficking case and the Supreme Court simply transferred them, instead of firing or prosecuting them (cited in Caballero, 2010: 174). In 1982, when a

from a 'mentorship model' to one in which negative exchanges are more common (e.g. from undue pressures on lower court judges to outright sharing of bribes) might be explained by the growth of the judiciary itself (cfr. Cossío, 1996).⁴ For our purposes here it is sufficient to point at the degradation of the patronage system that motivated, at the end of 1994, the creation of a judicial council and a merit-based selection system.

The judicial council was created during the transition to democracy, at the beginning of the six-year administration of the last president from the *Partido Revolucionario Institucional* (PRI), the hegemonic party whose candidates won the presidential elections since its creation in 1929 and until 1994. The Mexican transition to democracy was a gradual and protracted process, the start of which is sometimes placed in the socio-political crisis of 1968, that culminated with the alternation in the executive power as the result of the presidential election of 2000. The constitutional reform that created the council was one among many through which the governing PRI gradually loosened its grip on power while, at the same time, convincing the opposition to keep playing within the rules of the political system.

The judicial council was delegated the enormous administrative powers formerly enjoyed by the supreme court in terms of the selection of judges and the management of their careers. The council was composed by seven members that served a period of five years: the president of the supreme court (who was also the president of the council), three judges from different levels of the judiciary selected by lottery, two appointed by a majority of the senate, and one appointed by the executive. The council thus had a majority of judges and the supreme court played no excessive role in it: the judges came each from a different level of the judiciary and the lottery mechanism of selection effectively truncated the link with, and thus the influence of, the supreme

lower court judge decided against the nationalization of banks previously decided on by the government, the supreme court took the case, reversed the decision, and sanctioned the lower court judge administratively (See the report in the weekly journal *Proceso*: <http://www.proceso.com.mx/135872/en-mexico-la-justicia-no-es-ciega-mira-hacia-la-recompensa>). In 1988 judge Waldo Guerrero accepted a case against US businesses, which prompted the Supreme Court to force him to resign (cited in Caballero, 2010: 177-8). Well-behaved judges were also rewarded: Judge Salvador Martínez Rojas quickly ascended in the judicial hierarchy (and eventually becomes a supreme court justice) after a 1983 decision imprisoning leftist muralist David Alfaro Siqueiros upon request of the government and his 'mentor' at the Supreme Court. The perils of the patronage system of judicial recruitment reached a zenith in 1993 when a justice, Ernesto Díaz Infante, was convicted on corruption charges in a case where two circuit court judges voted 2 v 1 to liberate a defendant charged with the rape and murder of a six-year-old girl. Díaz Infante received half a million dollars from the family of the defendant and shared the other half of the bribe with two of the judges in the circuit court who were hearing the appeal of this case. The case was a huge scandal, see <http://www.jornada.unam.mx/2006/04/25/index.php?section=sociedad&article=054n1soc>.

⁴ The idea is that a smaller federal judiciary enabled a certain level of quality in the selection and monitoring of judges. From 1976 on, as the number of districts and circuits increased justices appointed more judges more frequently, but this came at a cost of the justices' capacity to guarantee quality in the selection and monitoring of their appointees. This suggestion needs to be properly tested along with other possible explanations.

court. Moreover, the lottery mechanism of selection also made costlier and less fruitful the lobby of current councilors because they would make decisions only for the limited period of five years and would not have any influence whatsoever on the identity of their replacements. The stage was set for establishing a meritocratic judicial career administered by a new autonomous institution.

However, right after the council started to work the Supreme Court began to strongly lobby to regain control over the administration of the judiciary and the administration of the judicial career (Fix-Fierro 2003; Carpizo 2000; Carpizo 1995). After some years, the pressure was successful: in 1999 a constitutional amendment gave to the supreme court the power to appoint the three councilors from the judiciary eliminating the lottery mechanism (see Pozas-Loyo and Ríos-Figueroa 2011). The supreme court also increasingly admitted to review decisions made by the council on both constitutional and purely administrative grounds, undermining the council's authority. The judicial council, in turn, took a long time to develop a standardized procedure for the merit examinations and designed most the calls to register in the merit examinations to fill vacancies in a way that only people already working in the judiciary could apply (see Fix-Fierro 2018).⁵ Only two of more than 40 positions in the federal judiciary are obtained through a proper merit examination, the bulk of the positions require simple tests or are filled directly by the judges who preside the courts. Moreover, many of those lower-level positions are filled by relatives of sitting judges (Ríos-Figueroa 2018).

Why is the merit-selection system not performing well? Part of the answer lies in design flaws, such as the incomplete judicial career, or the lack of a standard procedure to carry out the examinations. However, this paper argues that the answer is to be found further back and at greater depth: in the legacies of the patronage system in place under the authoritarian period that have carried over into the democratic one.

II.- Authoritarian Legacies: Persistent Patronage Networks

The challenges to explain present-day outcomes by causal factors operative during an extinct political order include clearly defining the legacy, empirically identifying the effect of the proposed cause, and suggesting a sensitive and effective mechanism of transmission of the legacy from the past and into the present (Simpser, Slater, and Wittenberg, n.d., 22). Whereas oftentimes legacies are conceived in terms of formal institutions that persist despite a regime change (e.g. Dell 2012), it has also been argued that the underlying distribution of resources can persist despite changes in both regime and formal institutions (e.g. Acemoglu and Robinson 2008). Acemoglu and Robinson suggest that elites actually can often offset changes in formal

⁵ For instance, in 1999 right after the elimination of the lottery mechanism to select councilors, the new council with a majority of supreme-court appointees issue a call to fill forty new district court judges to which only individuals working on the supreme court could apply. The result was that 90% of those positions went for current or former clerks of supreme court judges (González Compeán y Bauer 2002, 235).

institutions that threaten to curb their power through means such as cooptation or bribery (2008, 268). The neutralization, undermining, or adaptation of the formal institutions can also be the work of persistent informal institutions and patterns of relations. For instance, Grzymala-Busse (2002) argues that certain pre-democratic organizational practices of communist parties made them more able to successfully adapt to democratic competition: new party leaders were more successful adapting when the party was more centralized and thus the rank-and-file members more disciplined and responsive.⁶

Because institutional change has power-distributional consequences, a change in regime and/or formal institutions is likely to trigger a response from the losers (Mahoney and Thelen 2010, 8). Moreover, because implementing the new institutions is plagued with problems of interpretation and enforcement, spaces open up for losers to resist the new institution right after its enactment (Mahoney and Thelen 2010, 13). Because formal institutions are always embedded in assumptions and understandings that are often implicitly held by the relevant community, when a new formal institution is not accompanied by a change in these “implicit understandings” its efficacy would be jeopardized (cfr. Mahoney and Thelen 2010, 13). In other words, to the extent that regime and formal institutional change is superficial, the losers will be able to use practices and relations from the previous regime to resist it at the moment of implementation and enforcement.

This paper argues that under the hegemonic party regime in Mexico an informal institution, the so-called ‘Gentleman’s Pact’ according to which supreme court judges took turns to fill lower court vacancies, over time produced patronage networks that sustained a persistent pattern of relationships and behavioral expectations of supreme and lower court judges regarding the requisites to become a judge and to advance in the judicial hierarchy. The supreme court resisted the creation of the judicial council, that inherited the administrative powers formerly enjoyed by the court. Supreme court judges, judicial councilors, and lower court judges reproduced patterns of behaviors that are consistent with those of the patronage networks created under the authoritarian regime, undermining the institutional autonomy of the council vis-à-vis the court as well as the newly created system of meritocratic judicial selection. Why and how do patronage networks can play the double-edge role of being both a resource usable by members of the judiciary and the mechanism of persistence of a pattern of relations?

Patronage relationships are characterized by personal interactions in which a superior (the *patron*) provides a public-sector job to someone who becomes her subordinate and the latter, in exchange, reciprocates with loyalty or other kinds of rewards. The relation takes place over time

⁶ Grzymala-Busse argues that “the crucial factor that fosters successful organizational transformation is a set of new leaders with the individual and organizational resources to implement a rapid and decisive organizational centralization” (2002, 11). More centralized successor communist parties were disciplined and effective parliamentary players, and also were able to use their elite’s “portable skills” and “usable pasts” more effectively.

and thus some kind of monitoring of the subordinate's behavior is necessary (see Hicken 2011, 288; Hilgers 2011; Stokes 2009). Patronage relationships involve an exchange of resources and power between unequal parties that are iterative because of the intertemporal nature of the exchange, and therefore are likely to generate mutual expectations and generalized principles of actions that would be reproduced in the organization. In other words, patronage relationships involve resources and tend to be 'deep' (Sewell 1992, 24), making them stable and enduring.

When the patron selects someone to offer a public job it is likely that we observe some homophily effects (McPherson, Smith-Lovin, and Cook 2001). Moreover, if people who occupy similar positions (e.g. supreme court judges) are "more likely to be similar than randomly chosen people, the connections between people who occupy equivalent roles will induce homophily in the system of network ties" (McPherson, Smith-Lovin, and Cook 2001, 434). In other words, supreme court judges when having a chance to appoint a lower court judge would tend to appoint one of their law clerks, perhaps of the same gender, who graduated from the same law school, or someone who come from the same state or region, or who is a family relative. At the same time, researchers have found that occupying similar positions (e.g. being district level appointees of the same supreme court judge) can induce attitudinal homophily (Caldeira and Patterson 1987).

To the extent that there are homophily effects the patronage networks will vary in terms of size and cohesiveness. The larger the network and the more central the patron (i.e. out-degree centrality), the more benefits that members of the network can obtain from their fellow network members (e.g. exchange of favors, support with work related activities). A more beneficial network is more likely to be sustained by its members. But more important for persistence and resistance to change is the cohesiveness of the network, and in particular of its core group or elite. As Kadushin points out: "If the inner core of the elite is cohesive, then the status quo is maintained; a cohesive elite can better mobilize itself to act in its own interest [...] Greater homogeneity of the inner core seems to characterize business, financial, and corporate elites in many countries [...] Elite theory generally assumes that such interaction is a conservative force." (Kadushin 1995, 204).

Therefore, the first hypothesis is that larger networks with more central patrons and a cohesive core would be more likely to persist.⁷ If we observe that individuals with links to these pre-democratic networks are systematically more likely than individuals without them to win a judgeship or a promotion under the meritocratic selection system, this would suggest the persistence of the beneficial effect to have links with the network. If a more dense pre-democratic network consisted not only on professional but also family ties a corollary of the first hypothesis is that judges who belonged to that same denser patronage network in the pre-

⁷ Supreme court judges were legally appointed for life, but de facto had very different length of tenure. Those who stayed longer in the supreme court would have had more turns appointing judges and, therefore, would be more central (outdegree centrality).

democratic period are more likely to engage in cross-hiring family relatives in the democratic period. The idea is that they used to exchange favors as part of the network, and they continue to do so under democracy.

A second hypothesis is related not to characteristics of whole patronage networks but to the effects of belonging to one of them. Specifically, the judiciary is a hierarchical institution and thus promotions from district level to circuit level court are beneficial for the individuals in terms of salary and prestige. Under the patronage system, supreme court judges also took turns to fill positions at the circuit level. Factors that influence promotion under the patronage system are likely to reflect characteristics of the network to which the individual belongs. For instance, the centrality of the supreme court judge who made the first appointment as district judge, family relations with a supreme court judge, or sharing the same college or birthplace of a supreme court judge. Under the meritocratic-selection system, in contrast, the factor that ideally determines promotion should be the result in the examinations administered by the judicial council (since there are examinations for first appointment and for promotions). There is no reason why the results in such examinations be systematically related to family, birthplace, or other type of connections with supreme court judges.

Therefore, the second hypothesis is that if the factors that determine promotion in the pre-democratic patronage system and the democratic meritocratic system are similar, this would suggest the persistence of a pattern of relations and expectations about how to get ahead in the judiciary. Specifically, during both the pre-democratic and the democratic period personal connections to supreme court judges or belonging to a strong network would be more important than merit to determine whether a judge is promoted sooner to magistrate and/or send to a better workplace (e.g. Mexico City, the judge's own state, a state capital, and so on).

III.- Preliminary evidence

The empirical strategy is to proceed in three steps. First, to show that under the meritocratic selection system (1995-2017) there is bias and nepotism. Second, to uncover and characterize the patronage networks that were formed in the period from 1976 to 1994. The third step would be to test whether those networks, or the pattern of relations that sustain them, persist and explain the observed biases in the meritocratic selection period (from 1995 to 2017).

III.1.- Bias under the meritocratic selection system (1995-2017)

In a nutshell, the merit selection system in place since 1995 is biased in favor of persons with relatives already working in the judiciary. Individuals with direct links to Supreme Court Judges (e.g. current or former law clerks) also have an advantage to become judges. True, Mexico no longer has the dysfunctional patronage selection system of the final years of the authoritarian period. But the merit selection system has suffered as a result of the turf war between the supreme court and the judicial council that started right after the creation of the latter. As

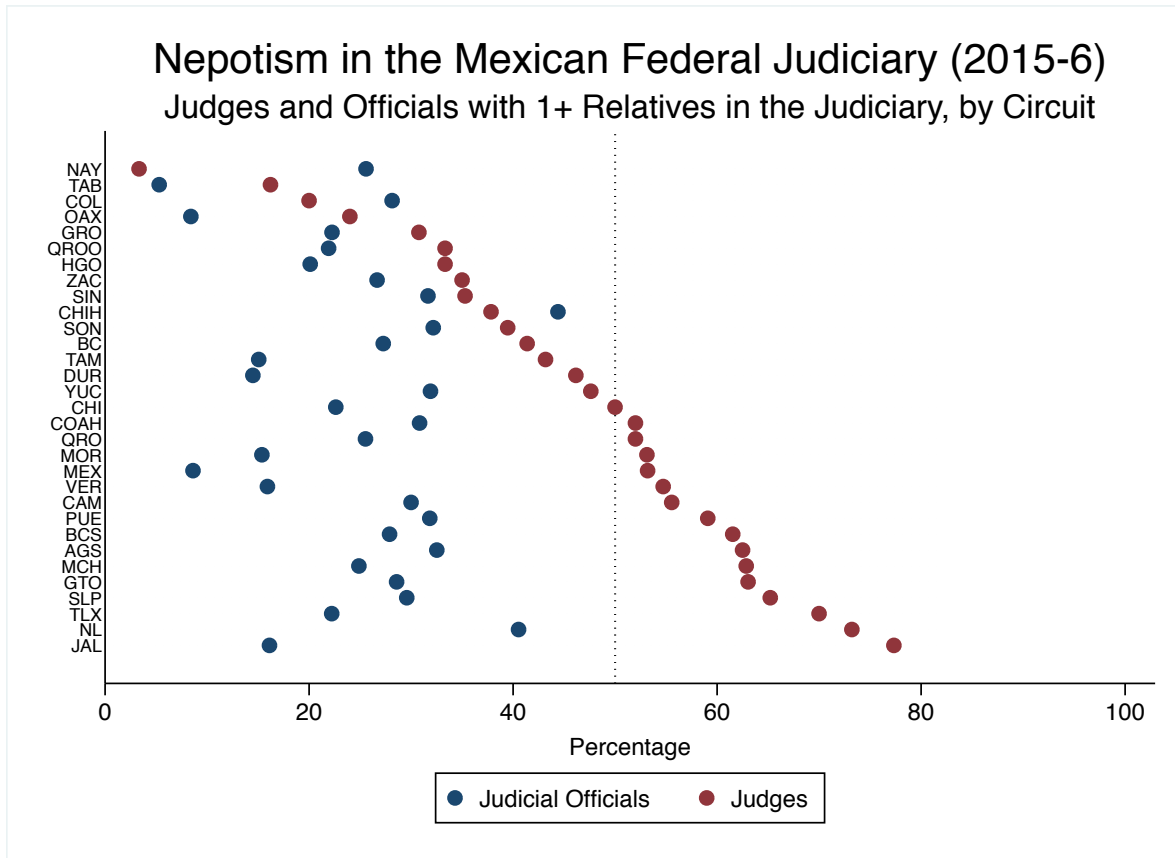
mentioned before, merit examinations are required for only two positions —district and circuit court judges— only a small fraction of the relevant positions in the federal judiciary. The bulk of the positions are obtained by passing an easy online course, an aptitudes test, or by direct appointment from a sitting judge.⁸ Moreover, the competition for the two positions that do require merit examinations is artificially limited. Specifically, a large proportion (87%) of the calls to register for the merit exams to become a federal judge are open only for individuals already working in the judiciary, those who got their first positions without strong meritocratic requirements. Finally, the truncated judicial career and the limited competition result in high levels of nepotism in the federal judiciary.

Figure 2 gives a sense of the magnitude of the problem. It shows the percentage by Judicial Circuit of federal judges (red dots) and judiciary officials (blue dots) with at least one family member also working in the same Judicial Circuit. The average is 51% for judges, and 29% for judiciary officials. There are Circuits where the number is close to 80%. of the judges with at least one family member working in the same circuit. And some federal judges have as many as 18 family members working in the same Circuit. This graph is based on N=6284 individuals working in the federal judiciary in 2015-6. It does not include the Supreme Court and the first Circuit (Mexico City), so the real numbers are likely higher.⁹ A first question would be: Is the identified bias in the merit selection system (i.e. in favor of persons with relatives already working in the judiciary) caused or positively related to the patronage networks of the authoritarian period? To answer it is necessary to uncover and characterize the patronage networks.

Figure 2.

⁸ Mexico is a civil law country, and the judiciary functions like a civil bureaucracy. Merit examinations are required only for district and circuit court judges, but not for other officials working in the judiciary whose job is relevant for the administration of justice. And, more importantly, who aim at becoming judges. This is different, for instance, from the “merit selection systems” that exist in some states in the United States.

⁹ It is important to mention that whether the concentration of family members in the same circuit produces good or bad results is an open question. In order to test for the effects of nepotism, it is possible to exploit variation across circuits. Also variation across type of courts, specially if it can be shown, for instance, that civil federal courts work better than administrative federal courts and that these work better than criminal federal courts.



III.2.- Patronage networks (1917-1976-1994)

First, let me describe the data in terms of networks (specially for the pre-democratic period 1976-1994):

Nodes: Judges (supreme court judges, district and circuit court judges)

Node attributes

- Status of the judge (supreme court/lower court).
- Sociodemographic: birthplace (state), college where law degree was obtained, gender. There is still a lot of missing data on sociodemographic node attributes.

Arcs:

- “appointed by” (the ‘sender’ is the supreme court judge, the ‘receiver’ is the lower court judge appointed by the supreme court judge).

This data was collected from the archives of the Supreme Court. Specifically, with a team of research assistants we looked at the so called “Secret Sessions of the Supreme Court” – sessions during which the judges discussed administrative matters as opposed to the “Public Sessions” where they decide actual cases. We read the minutes paying attention to the parts where they

discussed appointments, and coded the name of the appointer and the name of the appointee among other variables. We identified N=842 appointments, from 1917 to 1994. (The total number of federal judges that we have identified 1917 to 2017 is N=2424, which is very close to the universe). Of those 842 judges, in 658 observations I have both the name of the appointer (supreme court judge) as well as that of the appointee (the would be lower court judge). The remaining 184 judges were appointed by the entire supreme court or one of its chambers (in a session, for instance, in which several individuals were appointed) but not by a specific supreme court judge. **Figure 3** shows the entire network for the whole period (1917-1994) based on this data. The blue dots are Supreme Court Judges. The orange dots are lower court judges. We can see the Supreme Court Judges and their “sheep pen” (as is colloquially known). The large group is composed of judges appointed by the “Court”, with no identifiable appointer, during the period when the taking-turns agreement was not yet consolidated.

Figure 3.



For many years the patronage selection method worked well, in a kind of “mentoring” mode. The federal judiciary was small: less than 200 judges in total until 1975 (see **Figure 1**). Clerks or students of Supreme Court Judges received a job from their mentors in the Supreme Court, and in exchange they reproduced their judicial philosophy or were loyal in a more professional way. However, as the federal judiciary increased in size (and as the country was also growing and changing) the system degenerated into a more vicious form patronage. Starting in 1976 and more clearly during the 1980s, the size of the federal judiciary increased 300%. Negative exchanges (undue influence on particular cases, favors for third parties) were increasing. **Figure 4** focuses on the patronage networks focusing on the period 1974-1994. This Figure highlights the ‘walktrap’ neighboring communities (densely connected subgraphs connected or communities via a random walk). **Figure 5** shows the largest community.

Figure 4.

Neighbor Communities, 1975–1994

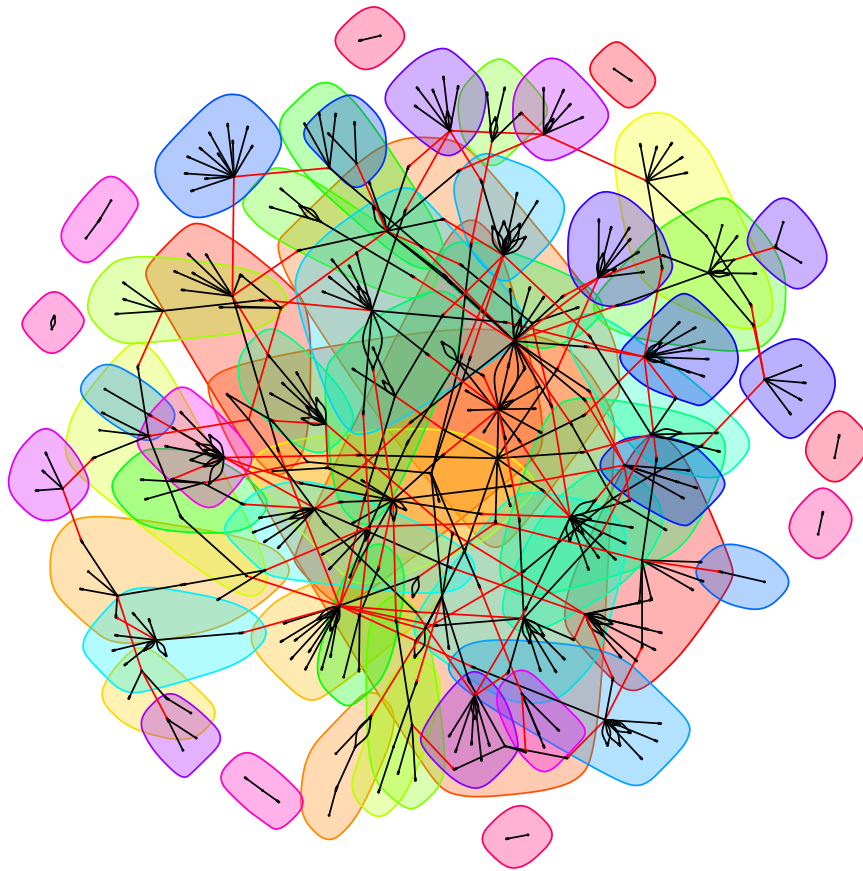
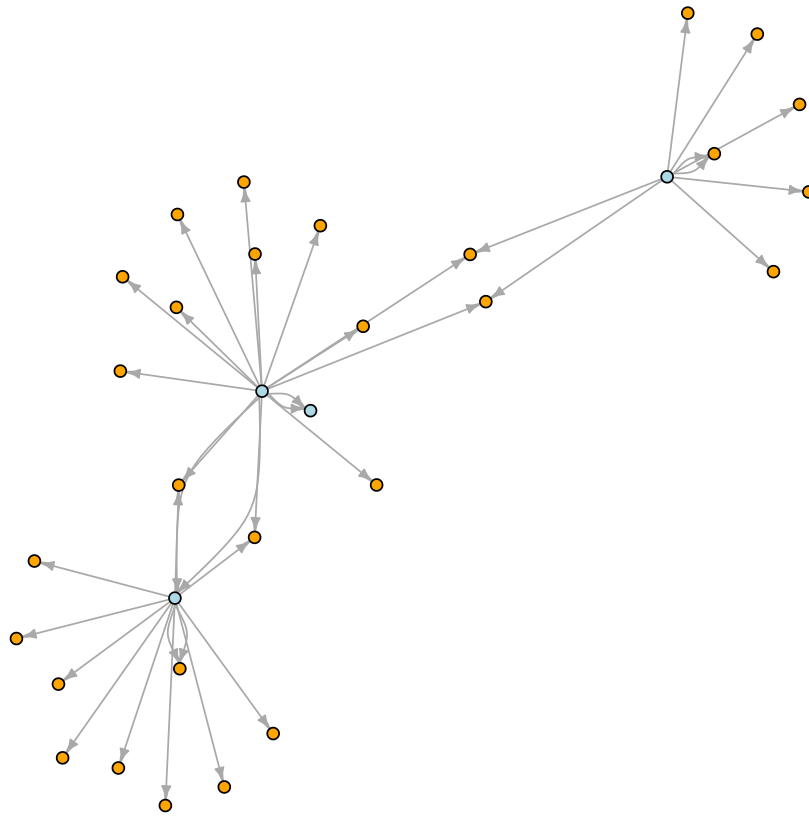


Figure 5.

Neighbor Community of Largest Group, 1975–1994

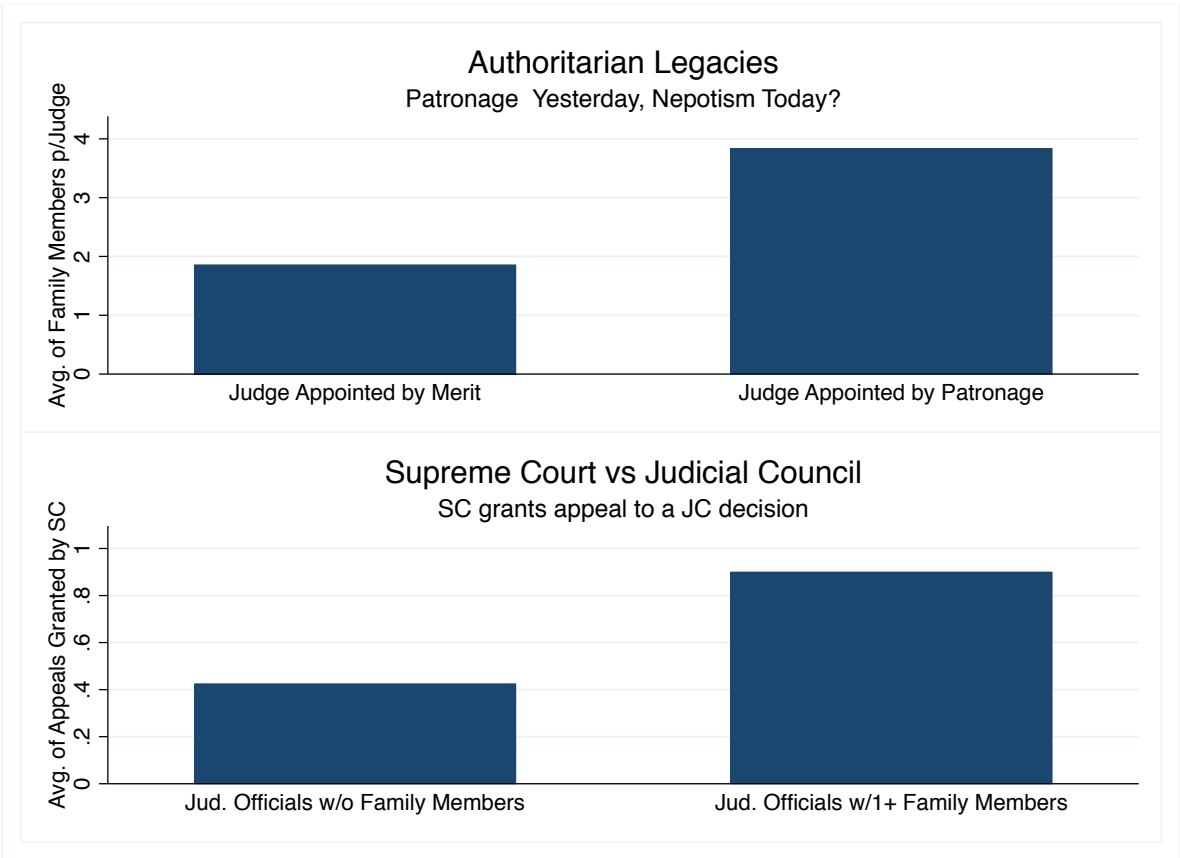


As the data collection process progresses on the sociodemographic attributes of the nodes, I will be able to answer questions such as: What attributes do the members of this community have in common? Do they come from the same state in Mexico? Did they get their law degree in the same university, do they belong to the same cohort? Do they share family links? The goal is to identify and characterize the most powerful, more united, better connected, patronage networks within the judiciary. These elite groups are the most likely to persist and be the carriers into the democratic period of the pattern of relations generated under authoritarianism.

III.3.- Persistence of Patronage networks

Figure 5 shows some very preliminary evidence of persistence. The upper panel shows that the average number of family members per judge who are also working in the judiciary (by 2015-2016) is larger for judges appointed by patronage than for judges appointed by merit. The lower panel shows that during the democratic period when a judicial official appeal to the Supreme Court challenging a decision made by the Judicial Council, the Supreme Court is twice as likely to grant the appeal to officials with family members in the judiciary than to officials without them.

Figure 5. Preliminary Evidence of Persistence of Patronage Networks



This type of connection is not only preliminary, as control variables are needed, it also assumes that observations/individuals are independent of each other. The goal is to show that the biases of the merit selection method are at least partly caused by the persistence of the pattern of relations and expectations created during the authoritarian period. In other words, that it is not isolated individuals that resisted the formal institutions, but rather that the problem is **structural** (in the sociological sense). Specifically, that generation after generation of individuals working within the judiciary inherit the norms, behaviors, and expectations that allow and enable them to go around or to shape the incentives set by the formal institution. In what follows, I offer a

couple of ideas to test the hypotheses presented in this paper leveraging the relational perspective.

Hypothesis 1. Larger networks with more central patrons and a cohesive core would be more likely to persist.

This hypothesis calls for a descriptive analysis of the whole patronage network during the period 1976-1994 in order to, first, rank order the nodes in terms of their out-degree centrality. The second step would be to get the “elite groups”, i.e. the strongest/more powerful/larger/more cohesive patronage networks within the judiciary during that period. For that I need some method to differentiate the different sub-groups within the whole network, and therefore I am thinking of trying (i) block modelling, (ii) structural cohesion measures (Moody and White 2003). To get the “blocks” one idea is to use of course the arc “appointed by” and also the “related to” edge, and possibly the “state of origin” as an edge because in Mexico being from the same state (e.g. Oaxaca, Chiapas, etcetera) creates a special loyalty link between the individuals (people from the same states are “paisanos” and there is a loyalty and mutual-help norm among “paisanos”) (cfr. Caldeira and Patterson 1987). The idea would be to get the “essence” or the structure of the patronage network during the pre-democratic period and see what are the main links that hold those networks together (e.g. family links and same birthplace are key). And then see whether those links are correlated with biased behavior under the democratic period (e.g. judges who engage more frequently in nepotistic practices, who get their positions even if they failed examinations).

The latter method, to find structurally cohesive groups, is perhaps more fruitful since “the presence of multiple paths, passing through different actors, implies that if any one actor is removed, alternative links among members remain to maintain social solidarity. Information and resources can flow through multiple paths, making control of resources within the group by a small (<k) number of people difficult” (Moody and White 2003, 119). In my specific case, the more structurally cohesive the group the less relevant the “founding patron” of that group but the stronger the “solidarity” amongst the group members. This is why I think these structurally cohesive groups could be called the “elite groups”. If I can rank order the different groups in terms of their structural cohesiveness, then I could see whether individuals who belong to the pre-democratic “elite groups” are more likely to display biased behavior during democracy (e.g. more nepotistic, more likely to get positions even if failed exams -through *revisiones administrativas*). The last step would thus be a logit model with the “biased behavior under democracy” as the dependent variable, and membership to a more/less structurally cohesive pre-democratic group as the independent variable (and control variables such as gender, age, time in the judiciary, and the like).

It will be key to define the baseline category against which I am testing the hypothesis. In other words, individuals that belong to those groups are “more likely than whom” to get ahead? One

possibility is individuals who did not belong to those groups. Another possibility is to generate a baseline based on chance in order to get at the likelihood that under a purely meritocratic system of selection say, two members of the same family or from the same state both work within the federal judiciary.

Hypothesis 2. The factors that determine promotion from district to circuit court in the pre-democratic patronage system (or from a “worse” to a “better” district) and the democratic meritocratic system are the same (or sufficiently similar), this would suggest the persistence of a pattern of relations and expectations about how to get ahead in the judiciary.

In order to test this hypothesis one idea is to create two-mode networks for both the pre-democratic (1976-1994) and the democratic (1995-2017) periods taking a subset of the district level and circuit level courts (so that I have the set of affiliations remains constant). I could get the transition matrix for each period and then compare them (e.g. McFarland 2006). This is a clean way to get at the factors that influence promotion, with the advantage that most of the circuit level judges come from the district level (so the pool of all potential candidates to circuit court is known). One complication is that the number of courts at the circuit level grows more rapidly than that of the district level (see **Figure 1**) and thus by keeping constant the affiliations I will get a biased picture. One way to get around this would be to keep constant the “more valuable” affiliations (those in Mexico City and other capital cities, for example). An alternative method to get at promotions in the pre-democratic is with a dyad model (e.g. McFarland et al. 2014): what are the edge or node characteristics that are systematically related to the appointment to circuit court by supreme court judges? The significant edge or node characteristics then could be used to determine, during the democratic period, what should be the independent variables in a logit model with promotion to circuit court as a dependent variable.

IV.- Conclusion

Not quite there yet

Appendix on data and sources

Boundaries: I am interested in all federal judges in Mexico from 1917 to 2017, which include district level judges, circuit level judges, and supreme court judges. To date, I have a dataset of N=2435 which is close to the universe. Individuals enter into the database once they become judges (at any level). For district court judges this means that I don't have the pool of candidates from which these individuals are selected. For circuit court judges it is usually the case that they are district court judges who are promoted to the circuit level (but this is not always true, since some merit examinations during the democratic period were for positions at the circuit level directly and having been a district level judge was not always a requirement).

Data to assess biases under the meritocratic-selection period (1995-2017)

Nepotism. I have a non-representative, convenient sample of 525 district and circuit court judges who were active during 2015-2016 (51% of the total) and the number of their relatives who are also working within the federal judiciary (only a few of the relatives are also judges, most have lower level positions such as clerks or administrative officials). Source: data obtained from a member of the judicial council.

Ad hoc merit-examinations: I have the names of those individuals who obtained the position of district or circuit level judge through an examination in which only current or former clerks to supreme court judges were admitted (so far I have identified N=40, 4% of the total, but I know there are more). Source: official public calls for merit examinations.

Revised failed examinations: I have the names of those individuals who obtained the position of district or circuit level judge thanks to a revision made by the supreme court of their failed merit examination (N=245, 25% of the total). Source: decisions on so called "administrative revisions" that are suits brought before the supreme court against decisions made by the judicial council.

Promotions to circuit court: I have data on the district court judges who were promoted to circuit court for all judges during the 1995-2015 period. I can know how quickly each individual was promoted. I can rank order the circuit courts in terms of their location and the birthplace of the individual (state of origin > mexico city > capital city > inner city) in order to assess the importance of the promotion. Source: official directories of the federal judiciary, webpage of the judicial council, plus other bibliographical and hemerographical sources.

Sociodemographics: I have data on birthplace, age, college, and gender for close to 100% judges at all levels during this period, but there are missing data on some variables for some judges. Source: official directories of the federal judiciary, webpage of the judicial council, plus other bibliographical and hemerographical sources.

Data to assess the patronage-selection period (1917-1994)

Appointment: I have data on the appointer (supreme court judge) and the appointee (district or circuit court judge) for N=170 supreme court judges (100%), N=471 district and circuit court judges (100% of judges during that period, or very close to it). Note that the number of actual appointments (a dyad of appointer/appointee) is higher because a supreme court judge may appoint a judge for district court, then promote him to circuit court, then transfer him to another

circuit court, etcetera. Source: minutes of the so called “Secret Sessions of the Supreme Court” during which administrative matters were discussed among the supreme court judges (from 1917 to 1994). They are available at the Supreme Court Archives.

Sociodemographics: I have data on birthplace, age, college, and gender for close to 100% judges at all levels during this period, but there are missing data on some variables for some judges. There is more missing sociodemographic data under this authoritarian period than under the democratic period (the further in time the more missing data). Source: official directories of the federal judiciary, webpage of the judicial council, plus other bibliographical and hemerographical sources.

Career: I have data on the date and place of first appointment as district court judge, on the date and place of the second appointment as circuit court judge (or a lateral movement to other court at the same district court level), on the date and place of the third appointment ... and so on for N=471 district and circuit court judges (100% during that period, or very close to it). I can know how quickly each individual was promoted. I can rank order the circuit courts in terms of their location and the birthplace of the individual (state of origin > mexico city > capital city > inner city) in order to assess the importance of the promotion. Source: official directories of the federal judiciary, webpage of the judicial council, plus other bibliographical and hemerographical sources.

Note on sources and pulling together all the data into a single database: One of the issues that has prevented me for running more systematic analyses is that data comes from different sources and oftentimes the name of the same person is written differently, and other times there are two or more persons with similar or very similar names. I am still in the process of correctly identifying that someone who appears in one source is the same person that appears in other sources.

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