Why does Patrimonialism Persist? Authoritarian Legacies and Judicial Selection in Mexico, 1917-2017

Abstract

This paper examines the persistence of patrimonial practices during transitions to democracy, despite reforms to transform patronage-based authoritarian state structures into Weberian bureaucracies. On the verge of democratization in Mexico, opposition parties and the outgoing authoritarian regime negotiated reforms to establish a merit-based system for the selection, monitoring, and promotion of judges at all levels of the federal judiciary. Twenty-five years later, we show that although reforms followed the best standards, the judicial career continues to reflect patrimonial behavior. Insiders to the federal judiciary and individuals connected to sitting judges exhibit significantly larger probabilities of passing examinations, occupy the vast majority of positions, and advance faster in the judicial career. We also find widespread family ties throughout the judicial bureaucracy. To explain why and how this patrimonial equilibrium persists, we turn to the development of informal institutions within the judiciary under authoritarianism. Based on archival, sociodemographic, survey, and judges' career data spanning a century and the critical window of reform, we argue that de-patrimonializing reform was subverted from the top-down and the inside-out. The Supreme Court and insiders to the judicial system responded strategically to the new rules and acted as the carriers of the old practices, ultimately assimilating the meritocratic selection system into extensive patrimonial networks with a long lineage. The study has important implications for our understanding of sustained patrimonialism and the conditions under which state-building reforms succeed or fail in new democracies.

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In many new democracies, there is a generalized sense that transitions from authoritarian rule have failed to produce meaningful improvements in the functioning of core state institutions. Central among these concerns is the persistence of patrimonial practices in the public administration and across branches and levels of government. In some cases, democratization focused narrowly on setting the conditions for free and fair elections, but key state institutions like courts, police forces, the military, or the administrative apparatus were left intact. Other times, however, ambitious institutional reforms were adopted to uproot the legacy of the authoritarian past, but these failed to generate the outcomes their designers expected or hoped for (Brinks, Levitsky, Murillo 2020, 1). In Latin America, several pro-democratic features of new or reformed constitutions adopted as part of the process of regime change have been poorly enforced, unstable, or vulnerable to counter-reform, from presidential term limits to nominally independent and professional judiciaries.

This paper engages with the question of why bureaucratization reforms—in the classic Weberian sense—adopted during democratization fail. Building on work on the relationship between formal and informal institutions, we examine the persistence in democracy of patrimonial logics inherited from the authoritarian past, in particular where the issue is not the mere absence of bureaucratic reform but its ultimate unsuccessfulness in eradicating particularism in core state institutions. Although it has been often observed that democratizing access to power did not bring expected changes in its exercise, the sources of failure of reforms and the mechanisms driving continuity in patterns of operation of the state machinery have seldom been examined with precision.

To address these questions, we exploit the establishment of a merit-based system of judicial selection in Mexico in 1994, an ambitious reform that sought to professionalize an opaque federal justice system that had historically evolved less to impart justice than to provide legal coverage and regulation to durable dominant-party authoritarianism. Drawing on rich original data on appointments and promotions to the entire federal judiciary both under the long authoritarian period and in the decades after reform, we show that patrimonial practices persist to a substantial degree. We then investigate the sources of such practices and the mechanisms underlying their persistence at the micro-level. To explain why well-designed bureaucratizing reforms failed, we turn to the history of judicial selection under authoritarianism.

We argue that strong informal institutions that were integral to the stability of authoritarian rule developed in Mexico's durable authoritarian regime. Following reform, insiders to the judicial apparatus, who had been socialized under the old system and developed high stakes in its reproduction, responded strategically. Their mobilization and extensive reach within the existing judiciary allowed them to perpetuate informal practices under the guise of meritocracy. This helps understand how exactly patrimonialism adapts and persist. A relevant implication of our findings is that successful transitions to Weberian bureaucracy may depend not only on comprehensive reform that introduces new rules and incentives, but on extensive replacement of key actors in patrimonial hierarchies as formal institutions are replaced. This approach,

however, may involve greater obstacles to the formation of reform coalitions in the first place, which helps explain why reforms often avoid purges, informal institutions persist, and patrimonialism appears to be so intractable despite state-building investments and reformist drives.

Authoritarian rule, informal institutions, and the persistence of patrimonialism in Mexico's federal judiciary

Merit-based systems for hiring and promotion in public sector employment are foundational for effective, efficient, and legitimate public administration (Brans and Hondeghem 1999; Carpenter 2001; Grindle 2010; Longo 2004; Pardo 2005). 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 mechanism 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).

Mexico is part of this trend. At the end of 1994, amid political turmoil and increased electoral competition that challenged the PRI's dominance, the regime and opposition parties approved a comprehensive reform to the federal judiciary to establish its independence from the executive and professionalize its structures. The reforms introduced a new powerful judicial council 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 have failed to deliver results approaching this ideal. We present evidence that the actual practice of appointments and promotions to district and circuit courts is strongly biased in favor individuals with connections to sitting judges and persons already working in other positions in the federal judiciary who did not join through competitive processes, but at discretion. Although examinations take place and are not entirely bogus, proximity to judicial elites trumps merit and access is limited for outsiders. We also find significant presence of family relatives working in the judiciary, consistent with nepotistic practice.

What explains the failure of institutional reform in defeating particularism and living up to the expectations, despite the withering of dominant-party authoritarianism, executive control over the judiciary, and the transition to a fully competitive democracy? As Mazzuca writes, "it is not possible to answer *why* patrimonial rule unless it is clear when it began" (Mazzuca 2010, 351).

We argue that the source of dysfunction in the merit-selection system goes back in time and is deeper than a merely flawed design of judicial reforms during democratization. Specifically, we trace the roots of today's institutional shortcomings to the consolidation of the patronage system of judicial selection that operated during the period of hegemonic party rule established in the 1930s.

The challenges to explain present-day outcomes by 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 from the past and into the present (Simpser, Slater, and Wittenberg n.d.). Whereas oftentimes legacies are conceived in terms of the continuity of formal institutions adopted in the past (Dell 2012), it has also been argued that the underlying distribution of power resources, more than formal institutions themselves, explain the persistence of the past (Acemoglu and Robinson 2008).[1] The neutralization, undermining, or adaptation of formal institutions can also be the result of the reproduction of informal institutions and behavioral patterns under new conditions. For instance, (Grzymala-Busse 2002) argues that certain pre-democratic organizational practices of communist parties, which had emerged to maintain authoritarian discipline, made them successful at adapting to democratic competition.[2]

Our study contributes to research on the formation and transmission of historical legacies by investigating how patronage first emerged as an informal institution within Mexico's federal judiciary and how once reforms challenged such practices, formal institutions were defeated. During the authoritarian pre-reform period (1917-1994), rulers and judicial elites fine-tuned a system of judicial selection that gave Supreme Court justices a high level of discretion in managing judicial careers, as a way of maintaining the judiciary under control and functional to the needs of the authoritarian coalition. After the attempted bureaucratization of the judicial career, the strong informal institutions of the past bred the patrimonial practices that have eroded the meritocratic selection system under democracy (1995-2017).

Specifically, the Mexican Constitution of 1917 granted the 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 justices were to fulfill this function nor offered any other guidelines relative to the judicial career. To fill this void, Mexican justices tried different methods and eventually one practice –taking turns among justices to fill vacancies–

[1] Acemoglu and Robinson suggest that elites actually can often offset changes in formal institutions that threaten to curb their power through means such as cooptation or bribery (2008, 268).

[2] 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.

took hold, consolidating into an informal institution known as the 'Gentlemen's Pact.' Justices became the heads of tight networks known colloquially as their 'sheep pens' (*corrales*), made up of themselves and their appointees. Such networks reproduced themselves over time.

Once the Supreme Court and the entire federal judiciary were incorporated into the orbit of the PRI's hegemonic rule, the judicial apparatus became a corporatist body with inner and outer layers, run from the core-out and the top-down. At the core of the institution were those Justices that had made their career within the judiciary, starting from an early age and making their way up the hierarchy. These Justices acquired experience in different positions (e.g. assistant, clerk, district court judge, circuit court judge) and formed extended networks throughout the federal judiciary.

Also high in the hierarchy but on the exterior layers were those Justices who were passing by, that is, for whom the Supreme Court was just one more step in a political career within the authoritarian regime. While elements more internal to the organization traded subordination to the executive for discretion in the management of the internal affairs of the judiciary, some spots in the Court were reserved for the circulation of elites, a process that is key for authoritarian stability (Svolik 2012). Governors, secretaries in the presidential cabinet, congressmen, and other high-ranking politicians were sometimes appointed to the Court and helped manage judicial affairs alongside the insiders.

We argue that though all Justices participated in the patronage system of the 'Gentlemen's Pact', the core or "internal" Justices were more influential in appointments to lower courts, promotions, and the regulation of behavior within the justice system. This power emerged as part of a delicate bargain between authoritarian rulers and judicial elites to align the administration of justice with regime objectives. As long as Justices maintained discipline and ensured that the judiciary danced to the tune of the national executive in the authoritarian system, they retained wide leeway in internal affairs and considerable discretionary power.

In a basic sense, this was the concession made by authoritarian rulers in exchange for obedience and the de facto nullification of judicial independence, critical for the reproduction of authoritarianism. However, the ability of Justices to regulate the judicial career from the top-down also served as a mechanism to impose vertical discipline in the judiciary and prevent judicial mavericks from challenging the regime or its policies through their rulings. Protected by this arrangement, core Justices built personal feuds and progressively erased the boundary between the public and the private, appropriating political office and the means of administration to run their patronage networks, the defining characteristic of patrimonialism (cfr. Weber 1978, 1028-9).

The constitutional reform of 1994 designed a new judicial career based on merit-based examinations administered by a new judicial council. The reform was explicitly designed to replace the previously existing informal institution of the Gentlemen's Pact. It introduced

regulations and a system of counterweights within the judiciary itself that were supposed to motivate new behaviors. By taking the administration of the human and material resources of the judiciary out of the hands of the Supreme Court and empowering an autonomous judicial council, meritocratic examinations would become the path to appointment as a judge and for ascending in the judicial hierarchy, independent of personal connections or submission to higher-level judges.

Because this attempt at institutional change had strong power-distributional consequences (Mahoney and Thelen 2010), it was bent to trigger a strategic response from those affected by the new rules. Although the reform introduced mechanisms to protect the meritocratic system from the likely reaction of those whose power would decline, formal institutions are intrinsically incomplete. Neither the entire chain of events or the full-range of behavioral responses can be anticipated, opening opportunities for affected interests to exploit gaps and leverage their resources to subvert institutional change. The result is a period of struggle in which promoters of reform push for enforcement of the new rules and affected parties develop creative strategies to make formal institutions conform to existing practices, values, and expectations. The ultimate outcome depends on the balance of power resources that actors locked in conflict with each other can bring to the table, all in the new political context that triggered reform.

In the Mexican case, we find that powerful insiders to the judiciary and the Supreme Court progressively undermined the authority and autonomy of the judicial council, appropriating its functions and subverting the reform. These actors had strong incentives to restrict the operation of the meritocratic system and unique resources to shape the adaptation of the judicial apparatus to new rules without abandoning the practices on which the reproduction of their power and influence depended. By responding strategically to the new legal design and leveraging extensive networks created under the old system, they drove continuity in patrimonial practices in the entry to and promotion in the judicial career, if with adaptations to make them fit under the carapace of a purely rational and meritocratic system.

In short, we argue that de-patrimonializing reform failed not due to outside pressures on the judiciary or resistance at the bottom of the bureaucracy, as several studies of bureaucratic implementation suggest. Instead, bureaucratization was subverted from the top-down and the inside-out. The result is that the meritocratic judicial career has been truncated, competition in examinations is highly restricted and regulated, and the federal judiciary continues to function as an insular structure in which top judicial elites and central actors in deep-seated and far-reaching patrimonial networks exert disproportionate influence over careers and the administration of justice. Unlike in the past, however, the judiciary also enjoys independence from the other branches of government, as institutional reforms and balanced electoral competition activated the constitutional separation of powers.

Critical to this outcome was the continuity of key actors in the Supreme Court and the and the fact that the vast majority of existing district and circuit court judges at the time of reform had

been appointed by "core" Justices in the past, thus forming part of networks in which patrimonial norms and practices ran deep. Specifically, the reform thoroughly changed the rules and procedures for selection and promotion, but did not replace powerful insiders in influential positions with new actors with an interest in breaking patrimonial networks. In practice, a distinction between "core" and "external" Justices remained during the key period of implementation. Along with their allies throughout the judiciary, the former devoted time and resources to erode the autonomy of the judicial council, trick and tweak meritocratic examinations by restricting competition, and appointing a large number of relatives to lower but permanent positions in the judicial hierarchy, in order to give them an advantage in meritocratic examinations.

The remainder of the paper is divided in three parts. The first analyzes the judicial selection system in place during the authoritarian regime, argues that it consolidated as an informal institution, and describes the patronage networks that the system promoted and sustained from 1976 to 1994. The second part describes the problems that have eroded the performance of the judicial council since its creation in 1995. We present suggestive evidence that the weaknesses in the merit-based system of selection are to be found in the persistent practices, attitudes, and expectations created during the authoritarian regime. The third part briefly concludes.

The "Gentlemen's Pact" and Patronage System of Judicial Selection, 1917-1994

Birth and development of the patronage system of judicial selection

The original text of the Mexican Constitution of 1917 established a Supreme Court of nine justices who were elected by a simple majority of the total members of both houses of Congress, out of a list composed of one candidate submitted by each state legislature (Art. 96). They enjoyed life tenure conditional on "good behavior" (Art. 94)[3] and could be removed only after simple majority in the legislature initiated an impeachment process (Art. 109). The Constitution also delegated to the Supreme Court the capacity to appoint district and circuit court federal judges (Art. 97) without further regulating the procedure. The Organic Law of the Judiciary that was enacted on November 2, 1917 simply added that appointments of lower court judges should be decided by majority vote and that Supreme Court justices could transfer lower court judges across district and circuit courts, but without reducing their salary or category. For the next eight

[3] Article 94 explicitly mentions that tenure during good behavior applies for those justices appointed after 1923. Those appointed in 1917 had a two-year tenure, and the second cohort had tenure of four years. Despite the fact that the Constitution of 1917 gave no role to the president in appointing Supreme Court justices, President Carranza directly proposed the first set of them to Congress in 1917 for a two-year period, and then in 1919, President Carranza again directly proposed a second set of Supreme Court justices to Congress for a four-year period. In 1923 the justices were finally elected according to the procedure established in the constitutional text and those were the justices who would enjoy life tenure (James 2006). In 1928 a new amendment established the appointment method for justices that is still in place: presidential nomination with senate approval (2/3 vote).

decades, the Supreme Court justices' constitutional prerogative to appoint, oversee, and promote federal district and circuit court judges was not regulated. The 'Gentlemen's Pact', in essence a patronage system of judicial selection, emerged within the Court with the tacit validation of the ruling party and the executive.

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 and thus some kind of monitoring of the subordinate's behavior is necessary (Hicken 2011; Hilgers 2011; Stokes 2009). Patronage relationships involve an exchange of resources and power between unequal parties; they are iterative and intertemporal, giving rise to mutual expectations, norms of loyalty and reciprocity, and generalized principles of actions that diffuse throughout an organization. The normative expectations implicit in a patronage relationship are thus respect and loyalty to hierarchical superiors (patrons), with the expectation that subordination is to be rewarded with promotions and levels of discretion in the use of public office.[4]

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. For many years, Mexico's federal judiciary was quite small: less than 200 judges in total until 1975. Starting in 1976 and more clearly 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 size of the federal judiciary increased 300% (see Figure 1).

The sudden increase in the size of the judiciary that started in 1976 consolidated the 'Gentlemen's Pact' as an informal institution (see Pozas-Loyo and Ríos-Figueroa 2018). Specifically, not only the taking of turns and unanimous approval of each justice's proposal became the standard procedure for nominations, but also deviations from the behavioral expectations sustained by the 'Pact' were sanctioned in a decentralized manner. Two of the main informal rules of conduct sustained by the Pact were the respect and obedience to the judicial hierarchy, especially to the Supreme Court, and loyalty to the "patron," that is, to the Supreme Court justice who made the appointment. For instance, justices sanctioned lower court judges when the latter challenged the government (see Caballero, 2010: 153-4).

[4] When normative and empirical expectations promote specific behaviors among a community of reference, we are in the presence of a social norm (or an informal institution, see Bicchieri 2016), such as the Gentlemen's Pact.

Figure 1.

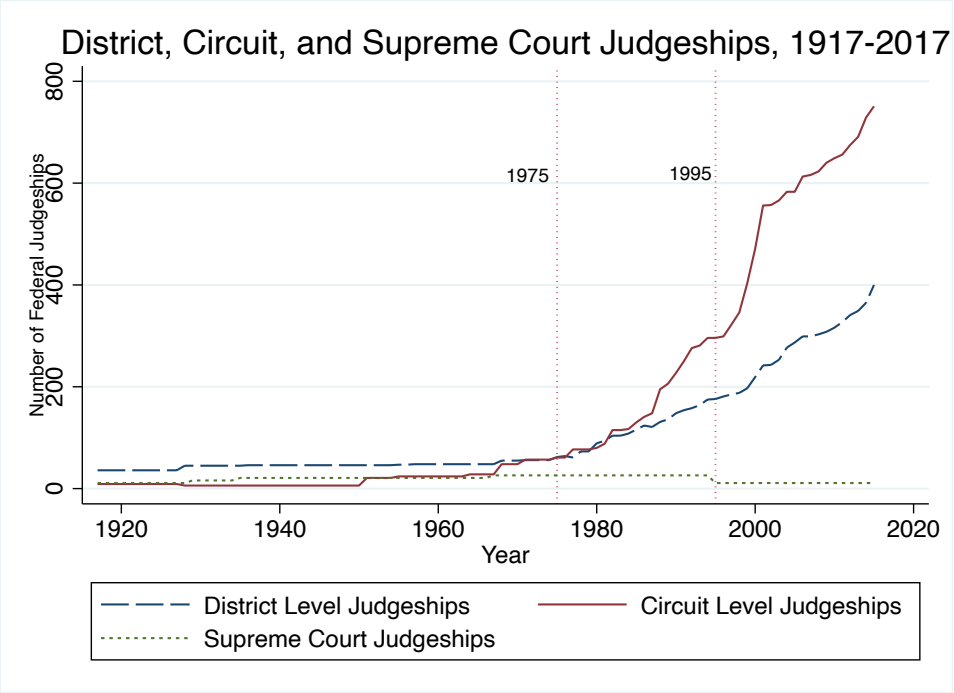


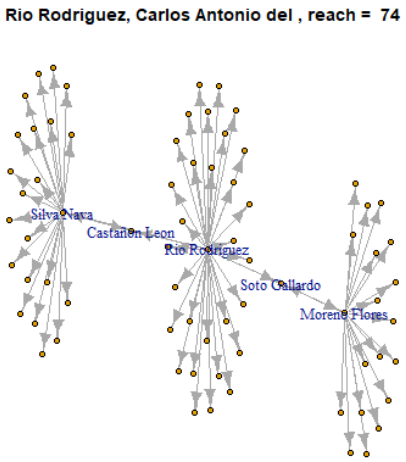
Figure 1. Number of positions for judges at each level in the judiciary for each year based on the official number of courts at each level (and whether the court is composed of a single judge or a panel of three judges). Because the positions may or not be filled at a specific point in time, the actual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

As the patronage method of judicial selection consolidated, justices developed tight networks that persisted over time. Their 'sheep pen' extended throughout the judicial system and as lower-level judges moved up the hierarchy, they continued to buttress the network with the nominating justice at the apex. Because the Supreme Court was always integrated by insiders who had made a career in the judiciary, even when a justice had to be replaced the system was not disrupted.

Data obtained through a search of the Mexican Supreme Court Archives allows reconstructing these networks (see Appendix I for details). The dataset on appointments contains 1,278 entries from 1917 to 1994, out of which 1,002 contain the name of both the appointer and the appointee. There are appointments made by Supreme Court justices to the positions of clerk, district court judge, and circuit court judge. The remaining 276 appointments were made by the entire Supreme Court or one of its chambers (in a session, for instance, in which several individuals were appointed) and not by a specific Supreme Court judge. Some justices appointed judges that would eventually become justices themselves, and thus had the chance to appoint other judges and promote other members in the network.

Figure 2 shows the graphical representation of the lineage of Justice Carlos Antonio del Río, who appointed thirty-four lower court judges out of which four made it to the Supreme Court (and made appointments themselves).[5] Figure A1.2 in the Appendix displays the twenty justices who made the most appointments during the century.

Figure 2. Lineage of Justice Carlos Antonio del Río



The increase in size of the judiciary after 1970 also brought a degradation of the patronage system. During the period from 1976 until 1994 (and, again, specially from 1987 to 1994), legal 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 (Carpizo 2000), and this is observable in increasingly common corruption scandals (e.g. from undue pressures on lower court judges to outright sharing of bribes).[6] The transformation of the patronage system of

[5] Figure 2 shows the measure of *reach* that takes into account not only the direction of appointment and the number of appointments (as does out-degree in Social Network Analysis, SNA) but also the appointments made by appointees who made it to the Supreme Court (and so on).

[6] 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 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

judicial selection from a 'mentorship model' to a more transactional approach might be explained by the growth of the judiciary itself (Cossío 1996).[7] For our purposes, 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 patronage system of judicial selection in the broader political context

The Supreme Court, and the entire federal judiciary, was an important piece of Mexico's party-state under dominant-party authoritarianism. The integration of the court into the functioning of the party regime was accomplished through four mechanisms. First, starting in 1928, the President nominated candidates to the Supreme Court and the Senate approved the proposal. In 1934, all the federal district and circuit court judges were replaced, plus the entire Supreme Court was packed with new Justices and their term was set at six years, thus coinciding with the presidential administration. In 1940, when the justices retired, the new President appointed again the entire Supreme Court (some Justices were re-appointed), although *de jure* life tenure was reinstated in 1944. Second, starting in 1933 and until 1994, an important unwritten political norm emerged: to reach Supreme Court, the justices needed to be affiliated to the hegemonic party (Cabrera Acevedo 1998, 145).

Third, the Supreme Court became one more political position through which the PRI-elite circulated across presidential administrations. Each new president had the *de facto* prerogative to both appoint individuals they wanted in the Court and to ask sitting justices to "move on," offering them another political position such as a governorship or a position in the cabinet (or to their private practice, if the justice was to be "punished"). This was the case even with the restoration of *de jure* life tenure in 1944. From 1944 to 1994, most presidents appointed more than 50% of justices serving in the Court during their terms, and almost 40 percent of the justices lasted less than five years, coming and going in keeping with the presidential term (see Caballero2010; Magaloni 2003, 288–9).

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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.

[7] 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.

Key for our purposes, the type of presidential appointments to the Supreme Court varied: there were some appointments of persons almost totally alien to the judiciary who landed in the Court for a few years in between other political appointments. There were also Justices who were closely linked to and thus represented the corporatist sectors of the PRI, mainly the military and the labor sector. However, other set of appointments consisted in persons more "internal" to the judiciary, including lawyers, jurists, and lower-court judges who had been building a career within the justice system. We thus identify two main types of Justices, namely, those who came from the "core" of the judiciary itself versus those who were more external to it, be it because they were passing through the justice system in their political careers or had the military or labor organizations as their main principals.

Fourth, and most important for our argument in this paper, during the hegemonic party regime the Supreme Court retained the control over the administration of human and material resources of the whole federal judiciary. Thus, the way in which the Supreme Court was incorporated into the hegemonic party regime entailed a combination of external subordination (i.e., vis-à-vis the President and the party) and internal dominance (i.e., vis-à-vis the federal judiciary). This was a typical combo in the operation of both state and civil society organizations. Specifically, it resembles the equilibrium reached with other powerful institutions like the Armed Forces and the Catholic Church.

The Gentleman's Pact, and the deliberate omission to regulate the judicial career, were part of this understanding. While the heads of the major institutions were required to tolerate the "stick" of external subordination, they could enjoy the "carrot" of internal domination, which afforded considerable political and economic gains. The prospect of losing these gains increased the costs of breaking the system's rules. In addition, institutions such as the presence of military or labor sector lawyers in the Supreme Court, or a high degree of autonomy of the military jurisdiction, helped cement the pact between groups in the autocratic governing coalition (Ríos-Figueroa and Aguilar 2017). Internal dominance was (and to a great extent still is) a characteristic of the Mexican Supreme Court.

Following this logic, we argue that "core" Justices exerted disproportionate weight on the administration of the judiciary and the regulation of careers within the parameters of the authoritarian regime. Thanks to the Court's unrestricted power to appoint judges, promote them to magistrate (circuit-level courts) and move judges across districts, these Justices imposed the vertical control and discipline that authoritarian rulers demanded from the judiciary. Because they had made their way up the hierarchy (sponsored by their own patrons), they knew the system from the inside out and had forged relations throughout the judicial apparatus. Upon reaching the Court, they were uniquely positioned to leverage their position to reward and continue to grow their patronage network.

Table 1 presents data consistent with the disproportionate power of "core" justices who had reached the Court from inside the judiciary, relative to their non-core counterparts. Throughout

the authoritarian period and prior to the 1994 reform that removed the appointing powers of the Court, on average, each core justices appointed 52% more district-level judges and 53% more circuit-level magistrates than non-core justices. In addition, their appointed district judges were promoted to circuit courts approximately two years faster. Moreover, their clerks were 53% more likely to be appointed as judges (either by them or other justices) and 84% more likely to reach circuit-level courts.

By the time of the 1994 reforms to introduce a merit-based system of entry and promotion in the judicial career, the judiciary was therefore heavily populated by judges who were deeply embedded in tight networks with a long history in the judicial bureaucracy since the formation of the revolutionary state in the early twentieth century.

Table 1. Judicial outcomes by centrality of Supreme Court Justices, 1917-1994

	Average number of appointed judges (N=626)	Average number of appointed magistrates (N=367)	Average years from judge to magistrate	Average clerks appointed as judges	Average clerks appointed as magistrates
Core Justice (N=101)	3.63 (0.55)	2.13 (1.39)	6.47 (0.51)	3.65 (0.56)	3.14 (0.51)
Non-core Justice (N=109)	2.38 (0.31)	1.39 (0.22)	8.42 (0.86)	2.38 (0.31)	1.71 (0.26)
Difference	**1.26** (0.62)**	**0.73* (0.4)**	**-1.95** (1.06)**	**1.28* (0.62)**	**1.42** (0.56)**

**p<0.01; *p<0.05

Persistent Patrimonialism and the Erosion of the Meritocratic Judicial Selection, 1995-2017

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 and others in the 1977 electoral reform that allowed opposition parties to gain more representation in the legislature without threatening the PRI's dominance. Following several subsequent reforms and the PRI's slow decline, the process culminated with alternation in the executive after the presidential election of 2000.

The constitutional reform that created a new judicial council to oversee the judicial career was one among many enacted during those three decades when 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 1994 delegated the administrative powers formerly enjoyed by the Supreme Court, including the selection of judges and the management of their careers, to a new body within the judiciary with the mandate of introducing merit-based examinations. With this change, the Supreme Court was supposed to concentrate on its jurisdictional tasks and the exercise of its expanded powers of judicial review, which would activate the constitutional system of checks and balances and help establish judicial independence after decades of subordination under authoritarianism.[8]

The reform of 1994 was designed to compete with the previously existing informal institution of the Gentlemen's Pact. As then President Ernesto Zedillo said when presenting the reform to congress: "with this reform each and every judge in the nation can be assured that his and her place in the judicial hierarchy will depend solely on their own merits and professional performance, excluding all other elements".[9]

We argue that although the constitutional reform of 1994 effectively terminated the Gentlemen's Pact it was set to displace, it did not eliminate the practices, attitudes, and expectations of the past. Resilient attitudes and expectations, and the patronage networks that had been sustained by them, have eroded the performance of the merit-based judicial selection system. The transmission cord of the patrimonialistic practices from the authoritarian past into the democratic period was formed by the actors we have called "core" Justices and their appointees, that is, the district and circuit court judges that had the highest stakes in the perpetuation of patrimonial practices and the most power resources to subvert the reform from within, given their control over the bulk of the judicial apparatus.

[8] The judicial reform of 1994 also granted stronger judicial review powers to the Supreme Court and increase its independence (see Magaloni, Magar, and Sánchez 2011; Ríos-Figueroa 2007).
[9] The *Exposición de motivos* can be read here (the quote is form p. 55): https://www.constitucion1917-2017.pjf.gob.mx/sites/default/files/CPEUM_1917_CC/procLeg/133%20-%2031%20DIC%201994.pdf

Key for the ability to bend the new rules was their continued presence in the Supreme Court. After the 1994 reform and especially after the PRI lost a legislative majority in 1997 and the presidency in 2000, the Court gained effective independence. However, even though the reform of 1994 re-shuffled the justices, only two were "external" and the other nine were internal or "core" Justices, meaning that they had long careers within the judiciary and therefore were tightly integrated into patronage networks. In fact, of the nine core justices sitting in the Court after the extensive 1994 reforms, two were re-appointed from the pre-reform Court.

In principle, only the judicial council would be involved in the selection and promotion of judges based on new meritocratic examinations. The reform established procedures to protect the autonomy of the council. Originally, it was composed by seven members that served each 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 councilors appointed by a majority of the senate, and one appointed by the executive. The council thus had a majority of judges, but 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 Court. Moreover, the lottery mechanism of selection also made costlier and less fruitful the lobbying of current councilors, given that they would only make decisions for a limited time period of five years and would not have any influence whatsoever on the identity of their replacements.

Despite this architecture, core justices and their "sheep pens" reacted strategically to the reform. We suggest that these judicial insiders acted as the carriers of the patrimonial practices of the past and integrated them into the new meritocratic selection system now officially run by the council. The historical distinction between "core" and "external" judicial elites remained after the reform, even though the profile of external justices changed relative to the past. Unlike their pre-1994 predecessors, the new external justices generally stay in the Supreme Court for their entire 15-year tenure and do not have either a political career or ties to the corporatist structures of the past or the military. Rather, they are typically successful private lawyers, public notaries, law professors, or lawyers in important positions in the public administration.

However, the profile of "core" justices appointed to the Court has changed little. They typically entered the judiciary early in their careers, had personal connections to existing judges, and progressively moved up the hierarchy as members of tight networks extending throughout the judicial branch.

Autonomy and authority of the council undermined by the Supreme Court

Through its "core" Justices, the Supreme Court effectively began the resistance at the very moment of the creation of the judicial council. When the 1994 reform was passed, two PRI

senators in the senate justice committee (who had been Supreme Court justices themselves) were highly receptive to suggestions from Supreme Court justices and convinced other senators to include a provision according to which procedural decisions of the council could be revised by the Supreme Court (i.e., the so called *recursos de revision administrativa*. See Carpizo 2000, 212-3). Moreover, "core" Justices (led by then Chief Justice Genaro Góngora Pimentel) played a key role in promoting a new counter-reform that in 1999, *de facto* subordinated the judicial council to the Supreme Court. In several interviews, the justices themselves openly talked about it. For instance, an article titled "Taking power back" published in the national newspaper *Reforma* noted,

> [T]he chief justice, Genaro Góngora Pimentel, states that the court has been talking with several senators and that the secretary of interior has been promoting the amendment. "Secretary Labastida is optimistic; they have been doing very good work," Góngora Pimentel affirms. "I would not want to speculate on what may happen. I believe that the legislative power will have the doors open to any clarification we can make." (Lorena Canales, *Recuperar el poder*, Reforma April 13, 1999)

The counter-reform undermined the council's autonomy. The strong lobby against the composition of the council led by Justice Góngora paid off: the Supreme Court acquired the power to appoint three councilors from within the judiciary that under the 1994 reform, were selected by a lottery mechanism (Pozas-Loyo and Ríos-Figueroa 2011).

In tandem, the Supreme Court and core justices also progressively undermined the authority of the judicial council. Under the Constitution, the decisions made by the judicial council were final and could not be challenged. However, based on a last-minute provision introduced in the reform that concerned the judicial career (the *recursos de revision*), the Supreme Court accepted to hear a legal suit (amparo) against a decision made by the council in 1996. In doing so, it undermined the unappealable character of the decisions made by the council during examinations, opening a back door into the judicial career.

From 1996 to 2014, the Court admitted forty-two individual appeals to the results of examinations, out of which thirty-four were granted to the plaintiff. These *amparos* were filed by judges or other judiciary officials against relatively minor administrative decisions made by the council that allegedly violated a constitutional right (usually a due process right). By accepting and granting those claims, the Supreme Court sent the signal that it, and not the council, had the last word.

Moreover, the Supreme Court also increasingly received so-called administrative revisions which, unlike *amparos*, do not invoke constitutional rights but are mere appeals against judicial council revisions. The numbers of those suits reached 170 in the year 2012. In total, from 1996 to 2014 the Supreme Court heard 916 administrative revisions against the council.

Truncated judicial career and non-competitive merit examinations

The judicial career in Mexico created in 1994 covers five positions: trial and appellate court judges, their respective law clerks, and the clerks' aides, called actuaries. 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, including the other positions that are part of the judicial career (clerks and actuaries) who are on the track of becoming judges. Those positions (more than 50—from chauffeur to secretaries, technicians, administrators, and many others) are filled, with different degrees of discretion, by the district and circuit court judges in their respective court. In total, by the end of 2018, the Mexican Federal Judiciary employed about 55,000 persons, out of which about 1,500 were judges.

Out of the five positions in the judicial career, only two are obtained by a three-part merit examination: trial and appellate court judgeships. Since 1995, when the merit examination was implemented, until 2016, there were 79 calls published in the official newspaper (*Diario Oficial de la Federación*) to fill vacant positions in the federal judiciary (41 calls for trial court judge, and 38 calls for appellate court judge; one call may be for several vacancies). Each year during that period there was at least one call, one year (2009) there were nine calls, the average is 5 calls per year. In 87% of the calls the set of eligible candidates to compete for the vacancies available was *restricted* to persons who were already working in the federal judiciary (for instance law clerks, actuaries, or *oficiales administrativos*). Only 13% of the calls were open for lawyers from anywhere in the country to participate in the competition. Some calls were even more restricted, for instance, only law clerks for Supreme Court justices could participate in the competition. 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). The last open call for merit examinations took place in 2010.

Table 2. Judicial careers, 1917-2016. Linear models.

	Years from judge to magistrate, 1917-2016			Probability of becoming judge for Supreme Court clerks		Probability of becoming magistrate for Supreme Court clerks	
	(1) 1917-1994	(2) 1995-2016	(3) 1995-2016	(4) 1917-1994	(5) 1995-2016	(6) 1917-1994	(7) 1995-2016
Centrality of Supreme Court minister	-0.493*			0.300***	0.050**	0.310***	0.361***
	(0.194)			(0.033)	(0.018)	(0.039)	(0.040)
Openness of examination for judge		0.513*					
		(0.203)					
Openness of examination for magistrate			0.445**				
			(0.169)				
Man	-0.177	-1.506***	-0.888+				
	(0.656)	(0.448)	(0.470)				
Graduate degree	-1.236**	-0.168	-0.086				
	(0.452)	(0.300)	(0.379)				
Constant	7.857***	5.888***	5.701***	0.407***	0.020**	0.263***	0.107***
	(0.926)	(0.609)	(0.458)	(0.022)	(0.007)	(0.022)	(0.017)
Observations	465	478	711	839	638	634	518
R-squared	0.03	0.04	0.01	0.09	0.02	0.1	0.17

***p<0.001; **p<0.01; *p<0.05. Robust standard errors in parentheses.

To test our argument that insiders to the judiciary, in particular "core" justices, managed to subvert the meritocratic examination process and became the vehicles for the reproduction of the patrimonial practices of the past, we rely on our newly compiled data on career paths at the individual level. Table 2 shows results for a series of models that relate career outcomes to the proximity toward "core" justices both throughout the twentieth century and after the 1994 reform. We also estimate the relationship between the relative openness of examinations post-1994 and the speed with which judges win promotions.

Column 1 reports the relationship between individual-level characteristics and the time between the appointment as district judge and the promotion to magistrate in the 1917-1994 period. Recall that in this time frame, the Supreme Court was directly responsible for appointments under the Gentlemen's Pact, and therefore for the vast majority of individuals, it is possible to determine which specific Justice first appointed them as a judge. The model shows that during the authoritarian period, judges appointed by "core" justices moved up in the hierarchy at a faster pace than those appointed by more external justices.

Models 2 and 3 turn to the post-reform period. Judges and magistrates included in these models reached their position through the merit-based examinations administrated by the judicial council. Model 2 shows that the more open the call to fill vacancies for judge was, the longer it took the winners to then become promoted to magistrate in another examination. Because more inclusive processes are more competitive and open the doors of the federal judiciary to potential outsiders, this is an indication that those who become judges in restricted examinations (insiders) not only benefit from reduced competition at this stage, but also get promoted to circuit-level judge faster.

Model 3 confirms this suspicion by correlating the number of years it takes individuals to win a position for as circuit-level judge with the level of openness of the examination. Those who move up the hierarchy in more open and competitive processes typically had spent longer time spans as district judges. In contrast, when calls to fill circuit-level vacancies are more restricted, the winners have on average spent less time as lower-level judges. This is again an indication that insiders benefit from tailor-made examinations both for entry and promotion. We also find evidence suggestive of gender bias in the examination process. Men typically win promotions faster than women.

Models 4 through 7 in Table 2 offer another crucial test for our argument about the role of "core" Supreme Court justices in reproducing the patrimonial practices that prevailed before modernizing reforms. Columns 4 and 5 show the association between the centrality of a Supreme Court justice and the probability that its clerks eventually get either directly appointed to judge pre-1994 (column 4) or win an examination for a vacancy post-1994 (column 5). Clerks who work for "core" justices are considerably more likely to stay in the federal judiciary as judges than clerks of non-core justices, both before and after reform.

Columns 6 and 7 replicate this test for circuit-level positions. Again, clerks connected to core justices exhibit a higher probability of eventually serving as circuit-level judges than their counterparts for more external justices in the Supreme Court. This pattern is visible both throughout the authoritarian era, when circuit-level judges who had served as clerks were 31% more likely to had done so for a "core" than for an external justice, and in the post-reform period, when the are 36% more likely. This confirms that the main carriers of patrimonial

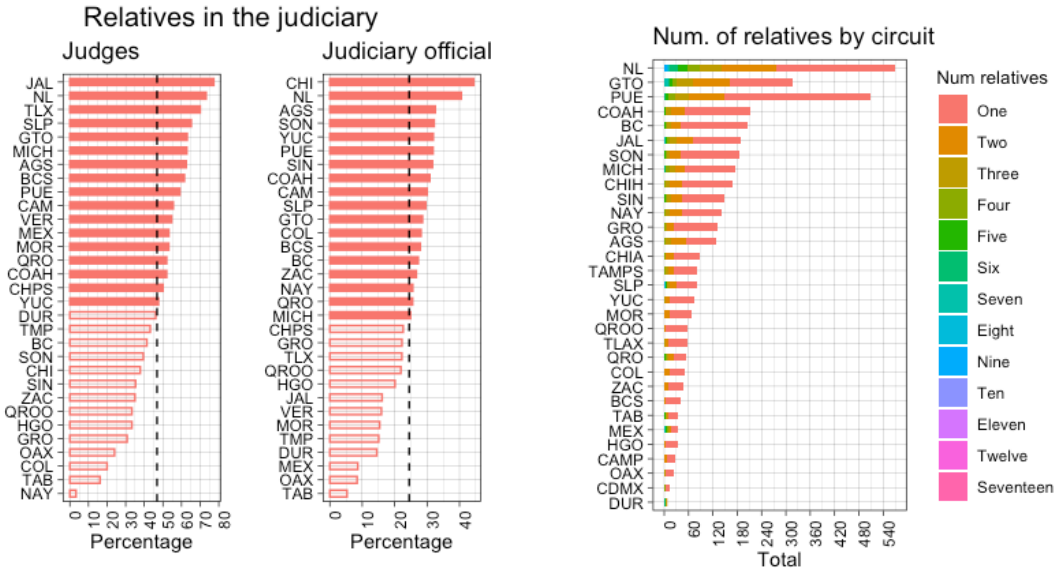
practices developed in the past into the new era are those who have a long lineage within the federal judiciary.

Thus, although the "Gentlemen's Pact" governing appointments in the Supreme Court is long gone, the examination procedures in the seemingly meritocratic system continue to favor insiders, who are enmeshed in traditional (and male-dominated) patrimonial networks with origins in the authoritarian era.

Nepotism

Gianfranco Pasquino defines nepotism as "the concession of public jobs or contracts on the basis of family ties and not of merit" (Pasquino 2005, 377). The definition contains two elements: a family tie, and its instrumental and inappropriate use to obtain a position or a favour that would not be obtained without the connection. It is hard to find direct evidence of both elements of nepotism, studies usually focus on the family links and the presumption of their inappropriate use if they are above a certain standard. For instance, a survey made across executive agencies in the United States in 2015 shows that in the Department of Justice people believe that 15% of officials have a family member working also at the Department (US Gov 2015, 27). In the Spanish *Tribunal de Cuentas* an investigation by the newspaper *El País* revealed that 14% of their employees have at least one family member working there (Hernández 2014b). The percentage by circuit of federal judges and judiciary officials with at least one family member also working in the same judicial circuit is well above those figures: The average is 49% for judges, and 23% for judicial 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 (see (Ríos-Figueroa 2018). How many family members? The range goes from 1 to 18 family members working in the same circuit for federal judges (the average is 3 family members per judge) (see Figure 3, and the Appendix A2 for details on the data on family links).

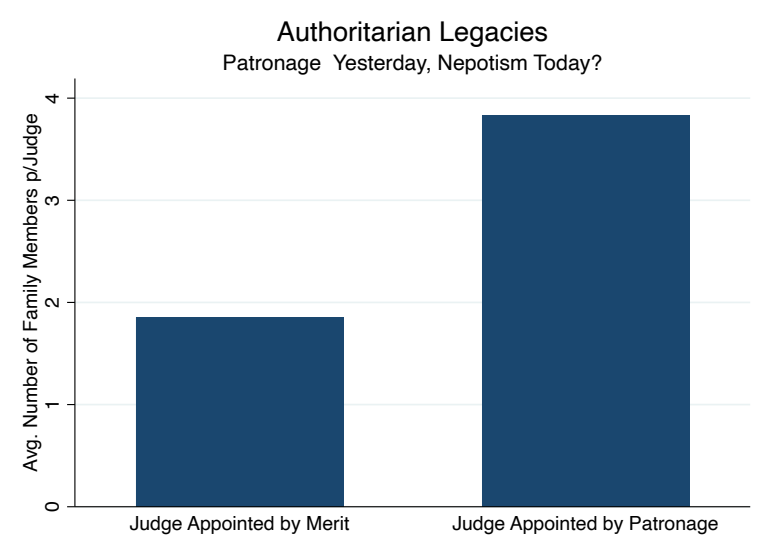
Figure 3. Family Links in the Mexican Federal Judiciary



Note: This figure is based on N=6284 individuals working in the federal judiciary in 2015-6. See Appendix A2 for details. The number of family members in the same circuit is for judges (not judiciary officials).

Family links are not *prima facie* evidence of nepotism (the misuse of the connection is still missing). But the sheer magnitude of family relatives tells something about the broken promise of a judicial career based solely on merit. It also tells us something about persistency of the behaviors that sustained the patronage system of judicial selection. Figure 4 shows that the average number of family members per judge who are also working in the judiciary (by 2015-2016) is twice as large for judges appointed by patronage than for judges appointed by merit.

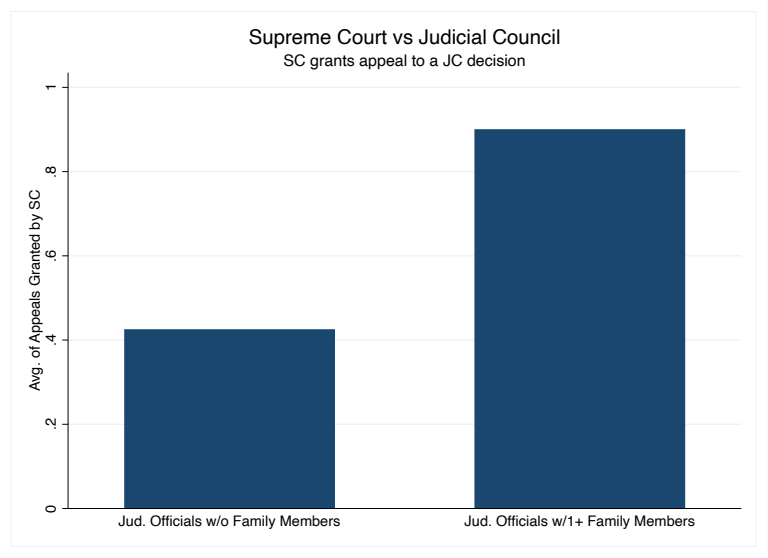
Figure 4.



Moreover, if we look at the positions occupied by relatives of judges in the federal judiciary and classify the more than fifty positions into six ordered categories, depending on how well are they regulated (see Appendix A2 for details), we find that 95% of judges' relatives occupy positions obtained through direct appointment by a single judge with no meritocratic requirement.[10] Recall that, in addition, 87% of the calls for judgeships are open only to persons already working in the judiciary. In practice, this means that calls to fill vacancies through examinations are very often biased in favor of judges' family members. Again, these aggregate numbers are not evidence of nepotism in specific cases, but they are nonetheless suggestive of the presence of inappropriate use of the family ties to help relatives enter into the judiciary and become judges, reproducing longstanding networks.

Finally, remember that decisions made by the judicial council can be appealed before the Supreme Court. Figure 5 shows the number of appeals filed in the Supreme Court that were decided in favor of the appellant in the period 1995-2016. The Figure separates these successful appeals in two groups, those belonging to judges and officials without relatives in their own circuit, and those with at least one relative. On average, 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.



[10] The data reveal that only 4% of the judges' relatives occupy positions in Category 1, a mere .35% in Category 2, 0% in Category 3, 37% in Category 4 (27% law clerks, and 10% actuaries that are the assistants of the law clerks), and 58% in Categories 5 and 6 (of which the most common, by far, is the *oficial administrativo* that takes 43% and the rest is divided across the remaining 40+ positions with less than 1% in each).

From November 25, 2019 to December 15, 2019 we[11] ran an online survey (with the help of the firm Buendía & Laredo) to members of the federal judiciary. From the online directory of the federal judiciary (that can be found at https://www.cjf.gob.mx/Directorios.htm) we obtained the names and emails of 14,676 members of the federal judiciary (including district and circuit court judges, their clerks, and the administrative officials below the clerks). A total of 726 people responded (5% response rate), and we got 526 fully responded surveys (a desertion rate of 27%). As expected, the bulk of respondents entered the judiciary after 1994 (85%). However, of those who entered before 1994, the majority (62%) have higher positions (district court judge and magistrate or circuit court judge) whereas those who entered the judiciary after 1994 are mostly clerks (secretaries) and administrative officials (other).

When asked what characteristics could influence promotion prospects in the federal judiciary (taking into consideration what in fact occurs, i.e. their empirical expectations), the majority of respondents did consider meritocratic qualities as important (higher academic degrees, experience, writing capacity, productivity, etcetera). However, a great majority also identified informal hierarchical relations as helpful. Surprisingly, even more than having family ties within the judiciary, having been a clerk of a Supreme Court justice and being loyal to hierarchical superiors are widely considered as helpful for obtaining a promotion. Even so, family ties are still quite relevant (Table 1).

Interestingly, when we compare those who enter the judiciary before and after 1994, 70% of both groups agree that being loyal to hierarchical superiors is very helpful to be promoted. This constitutes relevant evidence in favor of the persistence of norms and expectations of loyalty to superiors that were key to the functioning of the judiciary during the authoritarian era and allowed judicial elites to maintain discipline and form extensive patrimonial networks. Interestingly, only 27% respondents who entered the judiciary before 1994 consider very helpful for promotion being the relative of a district of circuit court judge, but this figure is 52% for those respondents who entered the judiciary after 1994.

[11] This survey was elaborated and analyzed with Andrea Pozas-Loyo.

Table 3.

Helpful assets for obtaining a promotion [total]	Helpful	Harmful	Does not matter	Does not know
Being a man	20%	2%	76%	2%
Being a woman	12%	18%	69%	2%
Having been a clerk of a Supreme Court justice	79%	0%	18%	4%
Having higher academic degrees	76%	0%	23%	1%
Having experience on various subjects	85%	0%	14%	1%
Writing opinions clear and well argued	90%	0%	10%	0%
Having started in the federal judiciary from the very bottom	63%	0%	36%	1%
Having good work-related statistics and productivity	78%	0%	20%	2%
Dominating the subject of "amparo"	87%	0%	12%	1%
Being a circuit court judge's relative	49%	10%	36%	5%
Being a district court judge's relative	49%	10%	36%	5%
Having been sanctioned by the judicial council	3%	83%	10%	4%
Being loyal to hierarchical superiors	70%	2%	22%	6%

When asked to identify if they had experienced certain negative pressures at work, the most marked one by far (24% of total respondents), was having the feeling of not being able to freely express an opinion or vote against a hierarchical superior. Of those who admitted to having perceived an impediment to express an opinion against (current or former) hierarchical superiors, 13.5% are circuit court judges, 25% are district court judges, 25% are clerks at circuit or district courts, and the rest 34% other lower officials.

Conclusion

The performance of the judicial council and the actual working of the meritocratic judicial career in Mexico are at odds with the expectations set out in the constitutional reform of 1994: the Supreme Court has undermined the authority of the council, the judicial career is truncated, examinations have been often restricted to benefit insiders, and there is a large number of family relatives working in the judiciary. What explains this institutional weakness (Brinks, Levitsky, and Murillo 2020)?

We argued that the explanation lies in history, in particular, in the development of patrimonial practices during the long period of authoritarian rule. To domesticate the federal judiciary and make it serve the broader interests of the regime, authoritarian elites granted the Supreme Court unrestricted powers to manage judicial careers. In exchange for subordination, justices gained

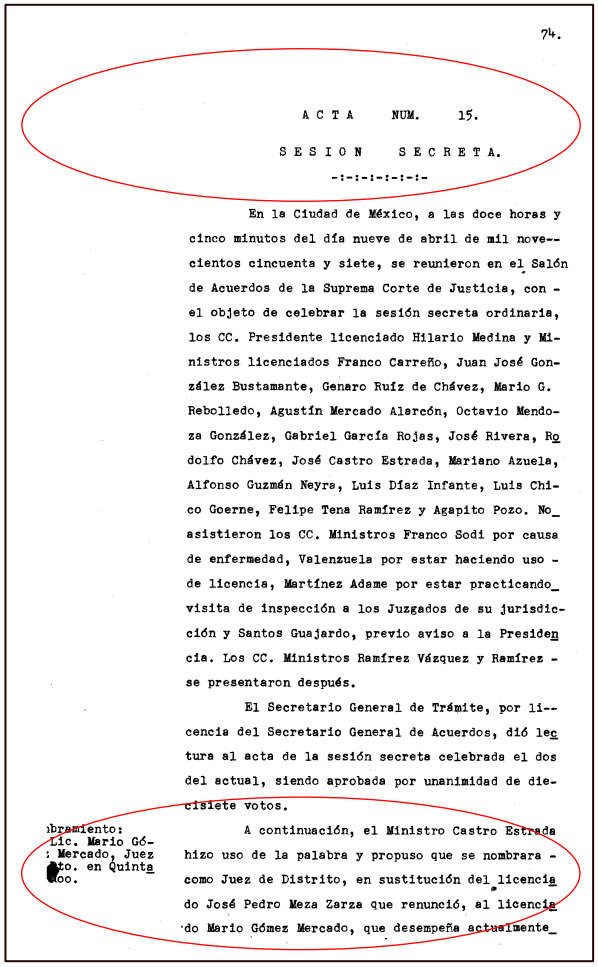
autonomy to manage judicial affairs at discretion. This unrestricted vertical authority was key to deter potential judicial challengers to the regime, who otherwise could have compromised regime objectives through their rulings. Under this mechanism of authoritarian governance, justices formed extensive patrimonial networks that permeated the federal judiciary.

Central in the development of these structures were "insider" justices who reached the Court after a long career within the judiciary itself. Although authoritarian executives used positions in the Court for elite circulation in the broader authoritarian coalition, space was always reserved for judicial insiders who could discipline the apparatus from the top-down. When democratization brought reforms to professionalize the judiciary and establish judicial independence, these elites and their allies throughout the system reacted strategically to subvert the new rules and procedures governing the judicial career. By successfully traversing the reform period and leveraging their deep control over the existing apparatus, they ultimately assimilated meritocratic examinations into strong patrimonial networks with a long and distinguished authoritarian lineage.

Appendix

A1.- Data on Patronage System of Judicial Selection and Patronage Networks[12]

The data on judicial appointments from 1917 to 1994 comes from the Archives of the Mexican Supreme Court, specifically 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. The minutes include discussions related to the appointments of district and circuit court judges, including information on (i) the justices' interventions regarding how to select judges, for instance proposals on whether a specific method should be followed, whether any formal requirements should be established, and whether the method chosen for the specific appointment being discussed should be used for future appointments; (ii) the specific appointment(s) being discussed such as 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 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.



74.

A C T A NUM. 15.

S E S I O N S E C R E T A.

-:-:-:-:-:-:-

En la Ciudad de México, a las doce horas y cinco minutos del día nueve de abril de mil nove-- cientos cincuenta y siete, se reunieron en el Salón de Acuerdos de la Suprema Corte de Justicia, con - el objeto de celebrar la sesión secreta ordinaria, los CC. Presidente licenciado Hilario Medina y Ministros licenciados Franco Carreño, Juan José González Bustamante, Genaro Ruíz de Chávez, Mario G. Rebolledo, Agustín Mercado Alarcón, Octavio Mendoza González, Gabriel García Rojas, José Rivera, Rodolfo Chávez, José Castro Estrada, Mariano Azuela, Alfonso Guzmán Neyra, Luis Díaz Infante, Luis Chico Goerne, Felipe Tena Ramírez y Agapito Pozo. No_ asistieron los CC. Ministros Franco Sodi por causa de enfermedad, Valenzuela por estar haciendo uso - de licencia, Martínez Adame por estar practicando_ visita de inspección a los Juzgados de su jurisdicción y Santos Guajardo, previo aviso a la Presidencia. Los CC. Ministros Ramírez Vázquez y Ramírez - se presentaron después.

El Secretario General de Trámite, por li-- cencia del Secretario General de Acuerdos, dió lectura al acta de la sesión secreta celebrada el dos del actual, siendo aprobada por unanimidad de diecisiete votos.

A continuación, el Ministro Castro Estrada hizo uso de la palabra y propuso que se nombrara - como Juez de Distrito, en sustitución del licenciado José Pedro Meza Zarza que renunció, al licenciado Mario Gómez Mercado, que desempeña actualmente_

...bramiento:
...Lic. Mario Gó-
...Mercado, Juez
...to. en Quinta
...oo.

[12] This part is based on Pozas-Loyo and Ríos Figueroa (2018).

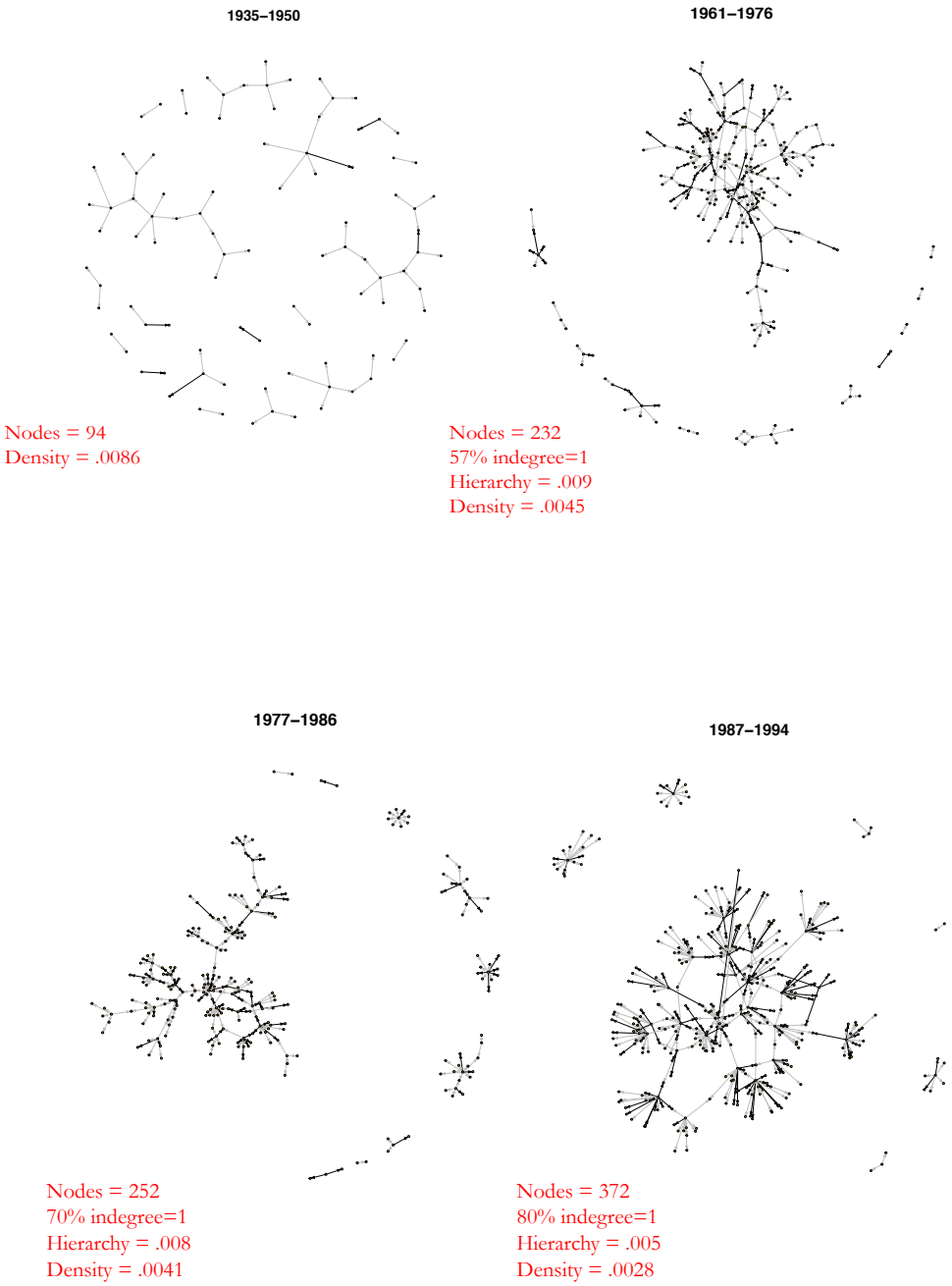
The dataset on appointments contains 1278 entries from 1917 to 1994, out of which 1002 contain the name of both the appointer and the appointee. There are appointments made by Supreme Court justices to the positions of clerk, district court judge, and circuit court judge. The remaining 276 appointments were made 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 A1.1 show the patronage networks in four periods: (1) 1935-1950, (2) 1951-1976, (3) 1977-1986, (4) 1987-1994. The nodes are judges that are connected by arcs that go from appointer (justices) to appointees (lower court judges). Figure A1.1 reveals the Supreme Court justices and their "sheep pen", and also reveals some features regarding the structural changes in the network as the judiciary grows and the Gentlemen's Pact consolidates.

First, the number of nodes increases in each period, reflecting both the growth of the judiciary and the higher frequency of the appointment turns. Figure A1.1 shows quite low values of density of each network (a measure of the number of connections a person has divided by the total number of connections that she could have) and also that density decreases in the successive periods (3), (4), and (5). Low density values are expected because patronage networks tend to be hierarchical. However, the values of the measure of hierarchy for each network (a measure of the extent to which the network approaches a perfect tree, an appointer whose appointees appoint others who appoint others etcetera, that takes values from 0 to 1) are also quite low but again decreasing in the successive periods (3), (4), and (5). Finally, the Figure shows the percentage of nodes in each period with an in-degree value of one (i.e. appointees who had only one appointer) that increases from 57% to 70% to 80% in periods (3), (4), and (5) respectively.

One interpretation of the previous features is the following. Hierarchy values are low because of the directionality of ties (justices appoint judges) and very few of the appointees make it to the Supreme Court and have the chance to become appointers. It thus makes sense that hierarchy is lowest in the last period because the patronage system of selection ends in 1994. The increasing number of persons with in-degree value of 1 is also consistent with this fact. But the increasingly higher percentage of persons with in-degree of 1 also means a more fragmented judiciary, one in which peer-monitoring of each other's appointees is increasingly difficult. The higher number of appointed per justice in the later periods also means that the appointer justice has a harder task monitoring his larger "sheep-pen". The increasing difficulty to monitor appointees is consistent with the degradation of the patronage system of selection in the period 1976-1994. The fact that the number of darker links in each period increases (i.e. appointments where justice and appointee are from the same law school) also reveal stronger links.[13]

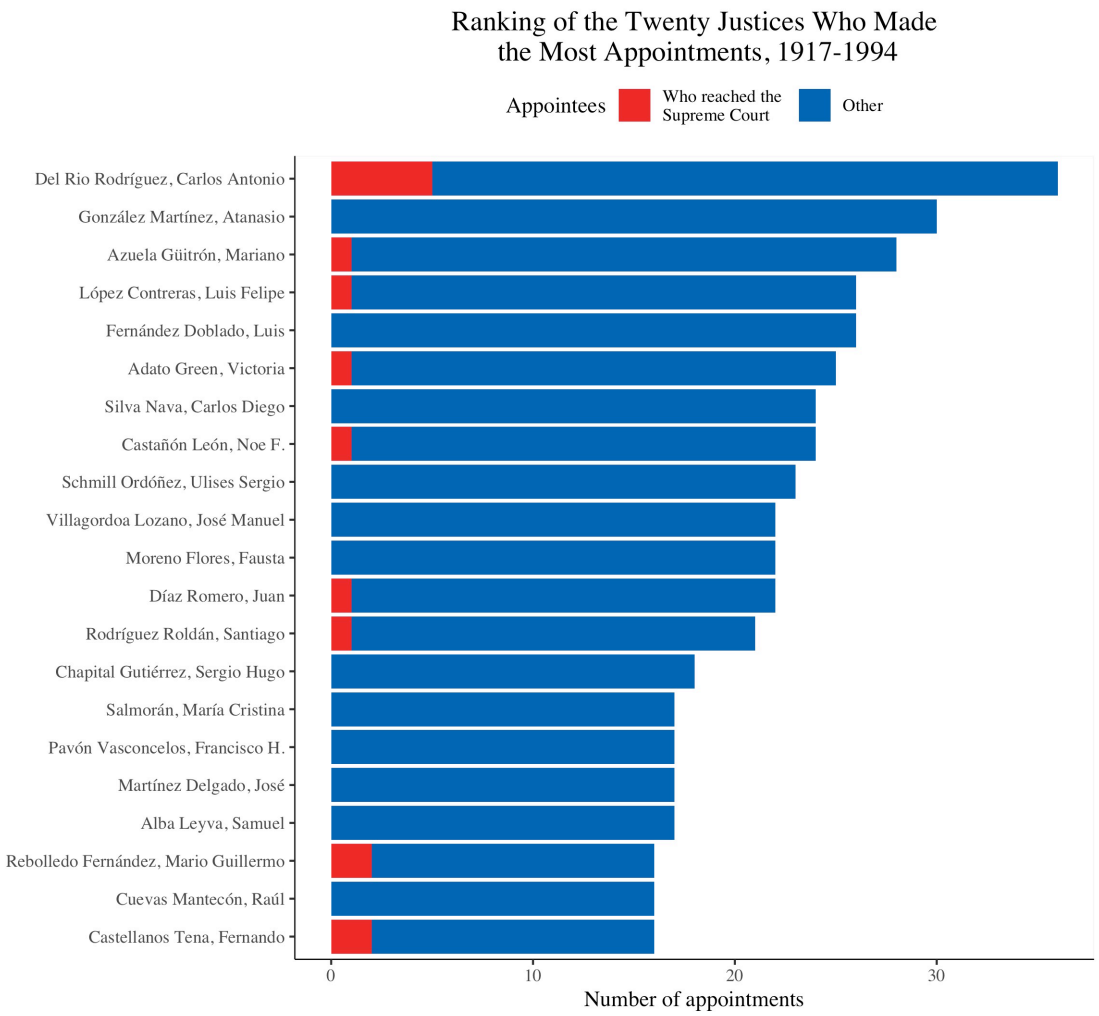
[13] When the patron selects someone to offer a public job it is likely that we observe some homophily effects (McPherson, Smith-Lovin, and Cook 2001). Moreover, if people who occupy similar positions (e.g. Supreme Court judges) are "more likely to be similar than randomly chosen people, the connections between people who occupy equivalent roles will induce homophily in the system of network ties" (McPherson, Smith-Lovin, and Cook 2001). In other words, Supreme Court judges when

Figure A1.1. Patronage Networks in four periods (links highlighted: same university)



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.

Figure A1.2


Ranking of the Twenty Justices Who Made the Most Appointments, 1917-1994
Appointees
Who reached the Supreme Court
Other
Del Rio Rodríguez, Carlos Antonio
González Martínez, Atanasio
Azuela Güitrón, Mariano
López Contreras, Luis Felipe
Fernández Doblado, Luis
Adato Green, Victoria
Silva Nava, Carlos Diego
Castañón León, Noe F.
Schmill Ordóñez, Ulises Sergio
Villagordoa Lozano, José Manuel
Moreno Flores, Fausta
Díaz Romero, Juan
Rodríguez Roldán, Santiago
Chapital Gutiérrez, Sergio Hugo
Salmorán, María Cristina
Pavón Vasconcelos, Francisco H.
Martínez Delgado, José
Alba Leyva, Samuel
Rebolledo Fernández, Mario Guillermo
Cuevas Mantecón, Raúl
Castellanos Tena, Fernando
0
10
20
30
Number of appointments

A2.- Family ties in the Mexican Federal Judiciary

The federal judiciary has four layers: first instance trial courts (called district judgeships or *juzgados*), two layers of appellate courts (called unitary and collegiate *tribunals*), and the Supreme Court. Geographically, the federal judiciary is organized in circuits that host both layers of appellate courts (the *tribunales*), and also in judicial districts within the circuits that host the trial courts (the *juzgados*). The judicial council is also part of the judiciary. According to the 2019 justice census,[14] by the end of 2018 there were 32 circuits (each one coincident with a state), 267 collegiate appellate tribunals (composed of three magistrates each), 99 unitary appellate tribunals (composed of one magistrate each), and 438 district trial courts.[15]

The data on family ties for this paper was collected by a former member of the judicial council, Lic. Felipe Borrego, and his team of collaborators during the years 2015 and 2016. It is a unique dataset in which the observations are relationships between two individuals who were working in the federal judiciary at that time. Each row contains information regarding the exact workplace and the position of the first individual, called "the worker", and the same information on the second individual, called "the relative". In addition, the dataset records the specific type of family tie between the two individuals (e.g. brother, sister, son, father, espouse, cousin). The source of this data are judicial records that were accessed by the councillor and this team. The total number of observations in the dataset is N=6284 (1107 if we restrict the observations to those in which "the worker" is a judge). Notice that each relationship contains two persons, the "worker" and the "relative". Because some persons appear twice (once as a "worker" and once as a "relative") in the same relationship when the unit of analysis is the relationship (the dyad) I exclude those duplicates and the number of observations is N=4731 dyads.

The dataset has some limitations, three of them are noteworthy. First, it does not systematically record all the possible family ties between the individuals. For instance, suppose there is an entry specifying that person A is the brother of person B, and another entry specifying that person A is also the brother of person C; but the dataset does not include another entry specifying that person B is the brother of person C. Second, the information was collected by circuit, thus there is no systematic information of family ties of persons who work in different circuits. Third, the database does not contain information about the first circuit (Mexico City), the largest and most important in the country, and it contains partial information about the second circuit (State of Mexico), the second largest and most important (the database does not contain information about the parts of the State of Mexico that are part of the metropolitan area of Mexico City,). The database also does not contain information about people working at the Supreme Court (about a thousand persons of which eleven are the justices). In sum, though the dataset is highly valuable it is also incomplete in important ways, so the real extent of family ties in the judiciary is no doubt higher.

The more than fifty positions in the federal judicial in terms of the level of meritocratic requisites to obtain them. The classification was made on the basis of the official guide for positions (*Manual de Puestos*) issued by the judicial council). Level 1 includes positions obtained by a three-

[14] Available at https://www.inegi.org.mx/programas/cnijf/2019/

[15] The criminal justice reform that started in 2008 and culminated in 2016 motivated the creation of so called national criminal justice centers that deal with criminal cases under the accusatory system. By the end of 2018 41 of those centers.

part merit examination and regulated with a high degree of detail. Level 2 includes positions obtain by competition but not as highly regulated as those in Level 1. Level 3 includes positions obtained by direct appointment by a collegial organ and regulated with a high degree of detail regarding the requirements to be obtained (including usually an online course, one examination, or an essay but without competition). Level 4 includes positions obtained by direct appointment by a single judge or administrator regulated with a high degree of detail regarding the requirements to be obtained (including usually an online course, one examination, or an essay but without competition). Level 5 includes positions obtained by direct appointment by a single judge, and a high degree of detail regarding the requirements to be obtained (but no meritocratic component such as an exam, course, or essay). Level 6 includes positions obtained by direct appointment by a single judge, and a low degree of regulatory detail regarding the requirements to be obtained.

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