

BEYOND LEGALISM: THE MEXICAN SUPREME COURT IN THE
DEMOCRATIC ERA

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Abstract

The defeat of the PRI in the presidential election of 2000 meant a critical transformation of the Mexican political system. After more than seven decades in power, the former ruling party (PRI) lost the presidency of the country and control over both the Lower House and the Senate. This work argues that the Mexican Supreme Court was not immune to this change. In line with strategic accounts that expect that Supreme Courts will engage in policymaking with fragmentation of power, this work shows that the Mexican Supreme Court become more proactive after alternation of power. Moreover, providing original data on *constitutional controversies* and *constitutionality actions*, this work identifies that the Supreme Court has become more proactive only in *constitutionality actions* where it can exercise abstract review and that it strategically chooses on which issues to exert its power.

This work argues that the Mexican Supreme Court's behavior can't be solely explained by fragmentation of power though. We show that the type of disputes brought to the Supreme Court has changed as the opposition increasingly gained control of political office. To empirically assess this hypothesis we perform a content-based analysis of the entirety of the publicized decisions of the Mexican Supreme Court on *constitutional controversies* and *constitutionality actions* until August 2007. Out of the 1,358 cases included in the database, almost half of the decisions were made prior to alternation of power while the rest of the cases were ruled after the transition to democracy.

Finally, we assess the emergence of new and non-partisan divisions among the justices. To achieve this, first, we use a model of dissent to evaluate what are the issues that cause division within the Supreme Court on *constitutional controversies* and *constitutionality actions*. Second, using each dissenting vote cast by the justices, we estimate the policy preferences of all the justices serving in the Supreme Court from 1995 to 2007 to find if there is any new line of ideological cleavage. Consistent with our expectations, in all these cases the Mexican Supreme Court is dividing along a new emerging line of ideological cleavage.

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