Explaining the sources of judges' legal conceptions in the Mexican judiciary*

Azul A. Aguiar-Aguilar**
University of Guadalajara

Ilsse Torres Ortega***
University of Guadalajara

Received: Nov 12th, 2021 | Accepted: Abril 27th, 2022

How to cite: Aguilar-Aguilar, Azul and Ilsse Torres Ortega. "Explaining the Sources of Judges' Legal Conceptions in the Mexican Judiciary". Latin American Law Review. No. 09 (2022): 117-137, doi: https://doi.org/10.29263/lar09.2022.07

Abstract

When explaining judicial decision-making, ideological accounts of judicial behavior have not seriously considered the judges' legal conceptions. This paper brings together two disciplines that used to sit at separate tables: judicial politics and legal theory. It aims at enhancing ideational accounts of judicial behavior by analyzing how legal conceptions such as legal positivism and post-positivism are shaped and socially reproduced. We claim that legal conceptions are, to some extent, determined by the type of educational model under which a judge studied, and by his/her level of education. We surveyed federal judges working in Mexico (N=71) to explore and test our contention and computed two analyses: hierarchical cluster analysis and binomial logistic regressions. We identified three clusters of judges' legal conceptions, where the educational model showed a significant effect in shaping the judges' legal conceptions.

Keywords

Judges, legal conceptions, legal positivism, legal post-positivism

---

* We want to thank Ana Karla González Lobo and Lorenza Trapero for their valuable research assistance. Special thanks to Alejandro Monsiváis who guided us in the empirical analysis.

** PhD in Political Science, University of Florence. Professor of Political Science at ITESO, Jesuit University of Guadalajara. Tlaquepaque, Jalisco, México. Código ORCID: 0000-0002-6329-577X. ✉ azulaguiar@iteso.mx.

*** PhD in Philosophy of Law. University of Alicante. Professor of Law at ITESO, Jesuit University of Guadalajara. Tlaquepaque, Jalisco, México. Código ORCID: 0000-0002-5929-9137. ✉ torresilsse@iteso.mx.

Explicando las fuentes de las concepciones jurídicas de los jueces en el poder judicial mexicano

Resumen

Las explicaciones ideacionales del comportamiento judicial no han considerado seriamente las concepciones jurídicas de los jueces al explicar la toma de decisiones judiciales. En este artículo, unimos dos disciplinas que solían sentarse en mesas separadas: la política judicial y la filosofía del derecho. El propósito de este artículo es mejorar las explicaciones ideacionales del comportamiento judicial mediante el análisis de cómo se configuran, moldean y reproducen socialmente concepciones jurídicas como el positivismo y el post positivismo. Afirmamos que las concepciones jurídicas, en cierta medida, están determinadas por el tipo de modelo educativo bajo el cual estudió el juez. Para probar nuestro argumento, realizamos una encuesta con jueces federales en México (N=71) y realizamos dos análisis: análisis de conglomerados jerárquicos y regresiones logísticas binomiales. Identificamos tres grupos con distintas concepciones legales, en los cuales el modelo educativo mostró un efecto significativo en la configuración de dichas concepciones.

Palabras clave

Jueces, concepciones legales, positivismo jurídico, pospositivismo jurídico

I. INTRODUCTION

Judges are prominent political actors. Their decisions determine how rights are enforced or undermined, and arbitrariness allowed or rejected. The role played by German judges during the Third Reich is a clear example of how the law was used to justify and support the atrocities perpetrated by the regime under the slogan "the law is the law".[1] One can also think of the political effects of Italy's *Mani Pulite* judicial investigations, where judges condemned several representatives and public figures and sowed the seeds to transform a half-century established political party system.[2] The case of Mexico is not the exception. Judges play a fundamental political role, and their behavior determines how sociolegal problems are addressed or remain unsolved.

But what drives judges to behave as they do? Which factors explain the choices judges make? Judicial politics has provided answers to judicial behavior using several theoretical perspectives. We want to highlight here the cultural-ideational model,[3] which claims that judicial behavior is explained by internal factors, such as legal culture, ideas (legal, political, or

---

1 Herbert Hart, "Positivism and the Separation of Law and Morals", in *Harvard Law Review* 71, N. 4 (1958): 593-629, doi:10.2307/1338225

2 Carlo Guarnieri, *Giustizia e Politica. I nodi della Seconda Repubblica*. (Bologna: Il Mulino, 2003).

3 Other models are the attitudinal model (Segal J. and Harold Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge: Cambridge University Press, 2002)) and the strategic model (Lee Epstein and Jack Knight, *The Choices Justices Make*. (Washington, DC: CQ Press, 1998)) of judicial decision making, which are, in fact, predominant in judicial politics.

social), judicial role conceptions, and how the judicial power is structured and organized.[4] Several scholars have criticized this perspective because culture, ideas, and beliefs are difficult to identify and measure.

Close to this explanation but sitting at separate tables —to follow Almond's idea—,[5] legal theory has extensively discussed legal conceptions and their implications for the judicial function. From the 20th century onwards, legal conceptions such as naturalism, formalism, realism, legal positivism, and non-positivist conceptions, such as post-positivism, were developed. In this paper, we focus on the most prevalent legal conceptions for the study and practice of law in the past 50 years in the Hispanic American world: positivism and non-positivist legal conceptions.

Legal positivism is characterized by the tenet of the social sources of law, and by the conceptual separation between law and morals; judges are thus only expected to apply legal norms (or positive principles) both in easy and in complex cases. Post-positivism is characterized by the affirmation of a necessary connection between law and morals (without denying the thesis on the social sources of law), the idea that the law is not just a set of rules, but rather a social practice through which value aims are achieved, and the importance of practical reasoning rather than merely deductive reasoning in decision making.[6] Thus, judges not only apply legal norms in their decisions but also take into account moral norms and principles in their reasoning.

As can be seen, both in judicial politics and in legal theory, there is a concern about how judges decide. In the first case, the emphasis is placed in an empirical-explanatory dimension, while the second favors a more analytical-critical dimension. Considering the interest in understanding how judges behave and decide, we have identified a gap in both fields of knowledge. While judicial politics' literature has predominantly analyzed external factors influencing decision-making, legal theory has examined the interpretation and application of the law in normative terms (law as it ought to be), highlighting the legal ideas that allow judges to make their decisions.

In judicial politics, the analysis of internal factors has had a secondary role, and in those cases where these factors are addressed, judges' ideas about the law or "legal conceptions" lack a sound legal-theoretical discussion. More specifically, issues such as how judges conceive legal phenomena, understand interpretative and justificatory activities in judicial decision-making, or how they envision their duties and the practice of law are not carefully unpacked.[7] Nonetheless, these works emphasize the importance of legal ideas in judicial decision-making. For example, while studying judicial change and human rights trials in Latin

---

4 Lisa Hilbink, *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile* (Cambridge: Cambridge University Press, 2007); Javier Couso, Alexandra Huneeus, and Rachel Sieder, eds., *Cultures of Legality: Judicialization and Political Activism in Latin America* (Cambridge: Cambridge University Press, 2010); Javier Couso and Lisa Hilbink, "From Quietism to Incipient Activism" in *Courts in Latin America,* eds. Gretchen Helmke and Julio Ríos-Figueroa (Cambridge: Cambridge University Press, 2011), 99-127; Ezequiel González-Ocantos, *Shifting Legal Visions. Judicial Change and Human Rights Trials in Latin America* (Cambridge: Cambridge University Press, 2016).

5 Gabriel Almond, *A Discipline Divided: Schools and Sects in Political Science* (London and Newbury Park, CA.: Sage Publications, 1990).

6 Manuel Atienza, *Filosofía del Derecho y transformación social* (Madrid: Editorial Trotta, 2017); Ronald Dworkin, *Law´s Empire* (London: Fontana Press, 1986); Robert Alexy, *La doble naturaleza del Derecho* (Madrid: Editorial Trotta, 2016).

7 Hilbink, "Judges beyond Politics in Democracy and Dictatorship"; Javier Couso, "The Transformation of Constitutional Discourse and the Judicialization of Politics in Latin America" in *Cultures of Legality: Judicialization*

America, González-Ocantos showed that "the cognitive lens through which positive law, jurisprudence, and doctrine are interpreted"[8] by judges is important and has an influence on the judicial actors' legal choices. Our work seeks to contribute to this perspective by measuring and empirically analyzing the sources of judges' legal conceptions.

The purpose of this work is to connect judicial politics and legal theory. Aiming at strengthening the theoretical debate and the conceptualization of judges' ideas, conceptions of judicial roles, and legal culture, the most important legal conceptions developed by legal theories are analyzed. To this effect we define each of them and discuss how they are shaped, adopted, and socially shared in legal practice. We assert that, among other factors, legal conceptions are shaped and socially shared by the model of education (passive vs. active methodologies) and by the judges' educational level (years of education), insofar as these determine the chances of participating in different educational models and curricula. In this paper, we test the following arguments: (a) passive methodologies in legal education, such as memorization or lecture-style classes, tend to shape formalist-positivist legal conceptions, while active methodologies, which use the Socratic method or case analysis, shape post-positivist legal conceptions; and (b) more years of education (obtaining a Ph.D. degree) tend to shape post-positivist legal conceptions. We shall take the case of the Mexican federal judiciary (district courts, collegiate courts, and electoral courts) to determine the type of legal conception that prevails among judges and determine to what extent these legal conceptions are shaped by what judges learned at law school and by the way they learned. To this effect, we shall use a database containing a survey of federal judges (n=71).

This paper is organized as follows. The next section discusses the legal conceptions that have the largest influence on legal theory and practice: legal positivism and non-positivist conceptions, specifically post-positivism. The third section describes the methodology and how the data was collected. In the fourth, we perform a hierarchical cluster analysis to determine the type of legal conceptions that judges in our sample hold. With the clusters of judges' legal conceptions, we computed binomial logistic regressions and tested the effect of variables: the educational model, level of education, political ideology, gender, and age. We then discuss our main findings and their significance for understanding how legal conceptions are shaped. Finally, in the concluding section, some of the implications of our study are presented.

II. LEGAL CONCEPTIONS' THEORETICAL FRAMEWORK

For a proper understanding of legal conceptions, it is convenient to specify some ideas about legal theory. Legal theory is part of the philosophy of law. Some theorists restrict the philosophical work to the descriptive theoretical/conceptual apparatus developed within the framework of legal theory, and some give it a broader role.[9] Questions such as what law is, what counts as

---

and Political Activism in Latin America, eds. Javier Couso, Alexandra Huneeus and Rachel Sieder (Cambridge: Cambridge University Press,2010), 141-160; González-Ocantos, *Shifting Legal Visions*.

8 González-Ocantos, *op, cit.*, p. 33.

9 For example, Ricardo Guastini points out that there are two ways of conceiving and practicing the philosophy of Law: as meta-jurisprudence and as a conceptual laboratory (Riccardo Guastini, *La sintaxis del Derecho*

law, how it is known, who creates it, what its function is, and what its relationship to other disciplines is, are all part of the philosophical reflection on law. Nevertheless, these questions are susceptible of multiple answers, which is precisely what gives rise to different conceptions of law. These conceptions have a direct influence on the way legal functions are performed. This set of ideas depends on what counts as law, how it is interpreted, how a decision is justified, which legal materials are relevant to decide, etcetera.

Overall, contemporary legal thought is characterized by the decline of the conception of Natural Law[10] and the rise and development of legal positivism. Although there are many variants of this conception today, as well as new proposals aiming to move away from it (such as non-positivist conceptions), legal positivism continues to be the "continental heritage" in Latin American law schools, being the most widespread conception in the theory and practice of law.[11] We shall now briefly discuss the legal conceptions in which judges were trained during the past decades: legal positivism and non-positivist conceptions, such as post-positivism.

a) Legal Positivism

Legal positivism is the legal conception that brings natural law into crisis with the promise of positivizing the rules and reducing uncertainty and legal insecurity. The common factor in the various theories belonging to this conception is the assertion that law is a human product, a result of social and historical phenomena, and not of a metaphysical entity. Legal positivism denies the existence of a natural law containing the true principles and standards that should govern human conduct. Therefore, the determination of what law is does not depend on its adequacy to morality.[12]

As Atienza and Ruiz Manero point out, in the Hispanic American context, legal positivism was linked to a political attitude of a liberal or socialist nature. In other words, it allowed limits to be placed on the exercise of power and demanded certainty on what the ordinary citizen may expect.[13] This explains, in part, why legal positivism still has a considerable influence on how the law is understood and applied: if the law does not depend on moral judgments, it is assumed, there is less room for arbitrariness. Given the importance of this conception and how heterogeneous it is, some clarifications are in order:

(Madrid: Marcial Pons, 2016, 25-26). Such a perspective contrasts with conceptions such as Manuel Atienza's, who holds that the essential function of legal philosophers is to "act as intermediaries between legal knowledge and practices, on the one hand, and the rest of social practices and knowledge, on the other" (Atienza, *Filosofía del Derecho y transformación social,* 76).

10 The central thesis of Natural Law is the existence of a law that transcends positive law (the law of human beings). This transcendent law consists of a series of moral norms and principles that are independent of human activity, but, at the same time, guide the behavior of human beings in society (Moreso Josep Joan and Josep M. Villajosana, *Introducción a la teoría del Derecho,* Madrid: Marcial Pons, 2004.)

11 Rodolfo Vázquez, "Concepciones filosóficas y enseñanza del Derecho," in *Academia. Revista sobre la enseñanza del Derecho* N. 12 (2008): 226.

12 Moreso and Villajosana, *op. cit.,* 195.

13 Atienza and Ruíz Manero, "Dejemos atrás el positivismo jurídico," in *Isonomía* N. °27 (2007): 7-28, 8.

(1) There are many approaches to legal positivism. For example, Norberto Bobbio's well-known proposal, that distinguishes three senses of legal positivism: as an approach, as a theory, and as an ideology[14]. In the author's words, this distinction allows us "to eliminate many misunderstandings in the field of historical analysis and ethical-political criticism of this trend, which is not at all homogeneous".[15]

(2) There are different versions of legal positivism. For example, the formalist positivism represented by Hans Kelsen[16] should be differentiated from the analytical positivism represented by H. L. A. Hart[17]. Presently, variants of legal positivism are also recognized, such as inclusive and exclusive positivism, depending on the conditional admission or absolute rejection of moral criteria in the definition of law.[18]

(3) Although legal positivism grants particular importance to the idea of form, it is not the same as formalism. In ordinary language, legal positivism is commonly identified with legal formalism or a formalist attitude. In this sense, it is important to emphasize that legal formalism as a conception of law refers to the group of legal positivist theories with which modern legal science began and which are considered a deviation from positivism: legal formalism (French School of exegesis), conceptual formalism (German concept jurisprudence) and jurisprudential formalism (analytical jurisprudence). These formalisms have in common that they favor form over content and reduce the law to a system of concepts or to a set of paradigmatic judicial cases. This made them the target of the so-called "revolt against formalism" in the 20th century.[19] Formalism, however, is also referred to as a defect of the law that manifests itself in a series of attitudes towards the law, such as the cult of law, ritualism, emphasis on procedural issues, excessive appeal to formal values —such as certainty and legal certainty—, and a preference for the strict interpretations of the rules, among others.[20]

(4) Contemporary legal positivism is not an archaic stance insisting that the law consists only of written laws and that the judge's task is to be the mouth of the law. On the contrary, some of the most renowned contemporary legal positivists build their theories from the paradigm of constitutionalism, recognizing the complexity of the legal system, the various types of legal statements (including principles), the limitations of judicial syllogism as a method of rational control of legal decisions, the importance of formal and substantial validity, and judicial

---

14 According to Bobbio, legal positivism as an approach distinguishes between the law as fact and the law as value and holds that the object of the jurist must be only law as fact (1997: 41-43). Legal positivism as a theory or conception of law is associated to the phenomenon of the State (1997: 43-46). Finally, positivism as an ideology of justice indicates that positive law, by the fact itself of being law, is just (1997: 46-49).

15 Bobbio, Norberto, *El problema del positivismo jurídico* (Ciudad de México: Distribuciones Fontamara, 1997) 49.

16 This position is characterized by an understanding of law as a set of coercive norms, identifying the law with the State, stressing the primacy of the formal values of law, and claiming to build a legal science purified of facts, morals, and politics (Kelsen, 1982, 1991).

17 Hart (2011) set out to build a model that would overcome formalist normativism and the empiricism of the realists. He proposed a theory of law as a descriptive sociology based on the analysis of language, which questions the type of norms present in evolved legal systems and recognizes some minimum contents of justice that law must include.

18 Joseph Raz, *Practical Reasons and Norms*. (Cambridge: Oxford University Press, 1999); Josep Joan Moreso, "Positivismo jurídico contemporáneo" in *Enciclopedia de Filosofía y Teoría del Derecho,* N. 1 (2015): 171-205.

19 Juan Antonio Pérez Lledó, *El movimiento Critical Legal Studies (*Madrid: Editorial Tecnos, 1996).

20 Manuel Atienza, "Cómo desenmascarar a un formalista," in *Isonomía,* N. 34 (2011): 199-201.

performance as something more than subjection to the law. As Luigi Ferrajoli argues, the constitutionalizing of the principles of justice has made it possible to make the law both formally and substantively valid. Legal constitutionalism can be conceived as "reinforced and perfected legal positivism, insofar as it is extended to the options to which legislation must conform".[21] Thus, from the positivist perspective, it still makes sense to distinguish between the law as it is and the law as it ought to be, so that the constitutionalizing of the principles of justice does not entail an intrinsic connection between morality and law, but an achievement of positivizing: principles are not values that require a process of ethical-rational deliberation, but their positivizing endows them with legal-normative content to be applied to legal reasoning.

In the case of the judicial function, having judges trained under a positivist conception favors the construction of a legal system based on the model of rules whose application does not require deliberation or moral assessments. The regulatory ideal of this judge is based on legal certainty and predictability. As Joseph Aguiló (2013) argues, the idea of the judge pertaining to this conception has focused on preventing judicial reasoning from opening to general practical reasoning (which includes morality), generating specific "fears" in judges, such as the loss of value-neutrality or the loss of objectivity. Thus, one can expect that, in contexts of enormous inequalities and generalized injustice, judges with positive legal conceptions favor the *status quo,* because these judges believe their duty is to comply with the formal values of the law (certainty, predictability), even if this implies neglecting or undermining fundamental rights. However, as the post-positivists hold, deliberation, critical review of the law, and moral reasoning, are necessary to protect and guarantee fundamental rights.

b) Non-Positivist Conceptions

Since the twentieth century, several legal conceptions have emerged that move away from legal positivism. Primarily, these alternatives attempt to merge the law with other aspects of the social system, so that it is no longer seen as a static object of study, an entity to be observed, described, and explained.

Non-positivist conceptions characterize the law as a social phenomenon, a social practice under construction. Among these conceptions, we highlight post-positivism as one of the theories that have made the most significant effort to confront the thesis of legal positivism and propose a shift of paradigm. Post-positivist scholars have forcefully criticized the idea that the law consists of rules only, asserting that it also includes principles which have a moral character (i.e., strictly speaking, they have no formal validity).[22] Principles are structurally and functionally different from rules (for example, their conditions of application are open) so that, to be applied in a specific case, they require the judge to weigh the principles involved, or even justify the defeat of a principle against a rule.[23] In this way, post-positivism asserts that there is an intrinsic connection between law and morality, to the extent that it is the existence of a claim

---

21 Luigi Ferrajoli, "Sobre la enseñanza del Derecho," in *Boletín informativo. Juezas y jueces para la democracia,* N.82 (2021): 15.

22 Dworkin Ronald, *Taking Rights Seriously (*London: Gerald Duckworth & Co. Ltd., 1977).

23 Robert Alexy, *Teoría de la argumentación jurídica* (Madrid: Centro de Estudios Constitucionales, 2007).

to correctness (morality) what defines the actions of legal actors, i.e., judges.[24] Post-positivists have also emphasized the idea of law, not as a mere set of rules, but as a social practice —even as an interpretative activity— aimed at attaining ends and values, which are constructed by the participants (legal operators) who live the practice from an internal point of view.[25]

Post-positivism has also contributed to the rise of human rights by stressing the importance of justification —the grounding of legal actions and decisions. For a decision to be considered justified, the mere reference to authority or tradition is no longer sufficient. To be valid and legitimate, the law must meet not only formal but also substantive criteria. This substantive validity is intrinsically linked to a respect for human rights.

Post-positivists consider that law has both an authoritative and evaluative dimension. Law, as a normative system, does not offer reasons to justify legal actions and decisions. It is the moral reasons underlying legal reasons what allows for such justification. The connection between law and morality would thus be justificatory: "the reasons inherent in legal reasoning that refer to the fact that certain norms are part of a legal system, by themselves, are not legal reasons, but belong to a broader justificatory system".[26]

Post-positivist legal conceptions tend to develop the judges' legal conceptions that see interpretation as a rational process that contributes to the construction of law. The judicial function is not understood only in terms of subjection to the law since the law must be interpreted in the light of the principles and values of the legal system. Therefore, post-positivist judges are willing to go beyond the strict application of written laws and consider their judgments as an essential weapon to change the socio-political scenario. That is, judges recognize that they are political actors who have the power to correct, interpret and create norms that contribute to improving constitutional democracy and protecting rights.

Sources of Legal Conceptions

Legal conceptions have different sources. They are created, developed, and reshaped at different points in the judges' careers: the law faculty, the bench, or judges' associations, among others. Law school is an important place where legal conceptions begin to formally shape the judge's beliefs. Here is where lawyers, in this case, judges, start to shape their legal conceptions, their legal conscience, professional identities, and how to behave like lawyers.[27] Legal conceptions are learned and socialized in law faculties through the educational models adopted. Students in law faculties learn codes, how to use them, how to interpret them, but they also learn which are the valid sources of law, who is authorized to create it, how law can be transformed, and for what purposes.

---

24 Robert Alexy, *El concepto y la validez del Derecho* (Barcelona: Gedisa, 1994).

25 Ronald Dworkin, *Justice for Hedgehogs* (Cambridge: Harvard University Press, 2011).

26 Carlos Santiago Nino, *Derecho, moral y política. Una revisión de la teoría general del Derecho* (Buenos Aires: Siglo Veintiuno Editores, 2014), 85.

27 Carlos Lista and Ana María Brigido. *La enseñanza del derecho y la formación de la conciencia jurídica* (Córdoba: Sima Editora, 2002), 32.

We can identify two types of legal educational models. The first is centered on passive methodologies and the second on active methodologies. Educational models using passive methodologies are characterized by a hierarchical learning process centered on the professor —who is the highest authority in the room—, lecture-style classes, doctrinal teaching, a dogmatic and abstract study of the law, and the memorization of norms as the primary method of learning.[28] An educational model based on passive methodologies contributes to forming uncritical jurists since it does not encourage students' participation and reflection on the legal system or on legal problems. The student is limited to passively listening and accepting what someone else, the professor, says, since he/she has more knowledge and experience. In other words, an attitude of deference and respect for authority is encouraged. As Rodolfo Vázquez (2008) argues, from a methodological point of view —according to legal positivism— if jurists must assume a non-evaluative and descriptive position, the teaching of law must correspond to this purpose: students must know how to explain the content of the legal system and reproduce it as literally as possible. The student must limit him/herself to repeating, without criticizing or questioning, the content of the norms, and assume that judgments of political or moral character are reserved for a different sphere. In this educational model, "the law neither announces nor denounces, it is not a factor of social transformation. The student is thus profiled with a conservative type of character".[29]

On the other hand, educational models based on active methodologies give particular relevance to a learning process centered on the students, to a clinical-style teaching based on experiences with real cases, mock trials, moot courts, and professors with solid teaching skills in case-method.[30] Educational models based on active methodologies require teachers not only to transmit content on positive law, but also to teach critical skills, offering reasons for thinking and offering solutions to pressing social problems. In the words of Cevallos "Here, teaching and practicing discursive and argumentative skills with students is essential: teaching techniques and methods should be directed towards that goal, encouraging reasoning and legal argumentation, and where they approach the legal method no longer as the process to "discover" solutions in the legal system, but as the method that justifies them".[31]

We argue that these two models of education are the basis for the reproduction of different legal conceptions because they create approaches, practices, and understandings of what the law is, how it ought to be used, and what is the appropriate role of judges. As Francisco Laporta

---

28 Ilsse Torres. "La falsa oposición entre teoría y práctica en la educación jurídica" in *Revista de Educación y Derecho*, N. 22 (2020): 1-22; Juan Antonio Pérez Lledó, "Teoría y práctica en la enseñanza del Derecho" in *Academia. Revista sobre enseñanza del Derecho*, 5, 9 (2007) pp. 85-189; Lista and Brigido, *La enseñanza del derecho y la formación de la conciencia jurídica*; Lorenzo Zolezzi. *La enseñanza del derecho* (Perú: Fondo Editorial PUCP, 2017); Frank S. Bloch (ed). *Movimiento global de clínicas jurídicas. Formando juristas en la justicia social* (Mexico: Tirant Lo Blanch, 2013).

29 Vázquez, *Concepciones filosóficas y enseñanza del Derecho*, 226.

30 Lledó, "Teoría y práctica en la enseñanza del Derecho"; Lista and Brigido, *La enseñanza del derecho y la formación de la conciencia jurídica;* Zolezzi. *La enseñanza del derecho;* Bloch, *El movimiento global de clínicas jurídicas*.

31 Danny José Cevallos, "Notas sobre la enseñanza del Derecho en el Estado Constitucional" in Hernández Terán, Miguel ed. *Derecho Constitucional para el siglo XXI* (Guayaquil: Universidad Católica de Santiago de Guayaquil, 2020): 40-44.

points out,[32] legal conceptions are the cornerstone of the teaching of law, and to talk about this teaching, we must first clarify how the law is understood.

III. MATERIAL AND METHODS

To understand and observe the judges' legal conceptions and answer the questions raised in this paper, we used a federal judges survey in Mexico. This survey was applied between December 2018 and July 2019 in eight different judicial circuits in Mexico. Given that transfers and relocations within the judiciary are frequent during the first years of the judges' careers, judges in the sample had acquired experience in 25 of the 32 judicial circuits in Mexico.

We visited judges from district courts, collegiate and unitary circuit courts, and the electoral court, all of them belonging to the Mexican federal judiciary. The types of law courts included were criminal (28.1%), administrative (11.2%), civil (7.4%), labor (5.6%), commercial (4.2%), electoral (22.5%), and one called mixed (21.3%), in which the judge decides all types of cases. The survey was carried out face to face. Most of the interviews took place at the judges' court, and a few were conducted through a video call on skype. Judges, as a political elite, are a population difficult to survey.[33] The traditional survey process to access the target population was unsuccessful: we obtained only a few responses from the random sample we chose. Thus, we decided to use response-driven sampling:[34] we benefited from "friendly judges" who had decided to participate in the survey and offered to contact other judges. Around 400 judges (out of 1437) were contacted through a formal letter of invitation, and only 71 accepted to participate.

One of the problems with this method of surveying judges is self-selection, which points to a biased data collection. Voluntary participation of subjects affects generalizability.[35] This analysis, however, yields novel and valuable descriptive information about judicial elites in Mexico. Although it is not representative of the whole population of judges, it provides essential features of a community that does not mingle with others and sees itself -as one of the surveyed judges pointed out-, as an isolated community sharing not only the same career but also places for socializing and celebrations. Furthermore, it provides original and innovative results to unpack the legal conceptions of one of the least studied elites: federal judges.

During the survey process, we contacted the judges' clerk or secretary to make the relevant arrangements. Many judges who did not accept to participate in the survey asked us if their clerks could answer the questions or if the judge could send us the completed questionnaire. Most of the contacted judges told us they were not interested in getting involved in this kind of exercise or had no time for it. Some of them did not answer our calls. Judges who answered

---

32 Francisco Laporta, "A modo de introducción: la naturaleza de las reflexiones sobre la enseñanza del derecho". *La enseñanza del derecho*, N. 6 (2002): 13-26.

33 Roger Tourangeau, "Defining Hard-to-Survey Populations". In *Hard to Survey Populations,* eds. Roger Tourangeau, Brad Edwards, Timothy P. Johnson, Kirk M. Wolter and Nancy Bates, (Cambridge: Cambridge University Press, 2014), 3-20; Rowland Atkinson and John Flint. "Accessing Hidden and Hard-to-Reach Populations: Snowball Research Strategies" in *Social Research UPDATE*, N. 33 (2001).

34 Tourangeau, *op.cit.*, 9.

35 Baldassarri, Delia, and Maria Abascal. 2017. "Field Experiments across the Social Sciences" in *The Annual Review of Sociology*. 43. pp. 41-73.

the questionnaire did it without hesitation and were willing to show others how they perform their tasks and how the judiciary works.

Of the 71 judges who answered the survey, 74.6 percent were male and 25.4 percent female. This percentage resembles the overall breakdown of federal judges: 79.9 percent male and 20.1 percent female[36]. In our sample, 40% of judges belong to district courts, 37% to circuit courts, and 23% to electoral courts.

Our survey questionnaire includes 167 variables and is divided into five sections: 1) family and background, including questions related to the social origins of judges, such as family's economic status, father and mother's occupation, judges' level of education, legal educational model, family's judicial or political networks, or associations they belong to; 2) judicial career, including questions such as how judges accessed the judiciary and have been promoted, how they have obtained their positions, institutional performance of the judicial career system, workload in their courts, job satisfaction and desired future career within the institution; 3) judicial ideas, legal culture, and legal conceptions, featuring questions regarding their view on the relationship between politics and law, the fairness of constitutional norms, how law should be applied, what is the status of positive law in decision making, or what is the role of interpretation and weighing; 4) opinions on indigenous rights, including questions aimed at determining the extent to which judges abide by legal pluralism and use the protocols of international conventions and of the supreme court in cases where indigenous rights are at stake; and, 5) judicial independence, including the judges' opinions on the independence of the federal judiciary from political, economic and criminal powers. For this paper, we used variables from the first and third sections.

To analyze the data from the survey we used R.[37] First, we conducted a hierarchical cluster analysis to identify groups of judges with different legal conceptions. Then, we computed binomial logistic regressions to determine how legal conceptions are shaped. For the hierarchical cluster, we selected variables that gather information on judges' legal conception from section 3 of the questionnaire, such as whether judges have a legislative role, strictly apply the law, allow for creativity in judicial rulemaking, weigh principles, consider the judicial creation of law as legitimate, among others (see next section). For the regression, we considered the clustered data and variables from the first section of the questionnaire: as independent variables, we used the educational model and level of education, and as control variables, political ideology, gender, and age.

IV. RESULTS

It is considered that judges in Mexico continue to reproduce in their legal practice the legal conception in which they were trained: positivism. They tend to understand their judicial

36 INEGI, *Censo Nacional de Impartición de Justicia Federal 2019*, available at: https://www.inegi.org.mx/contenidos/programas/cnijf/2019/doc/resultados_cnijf2019.pdf

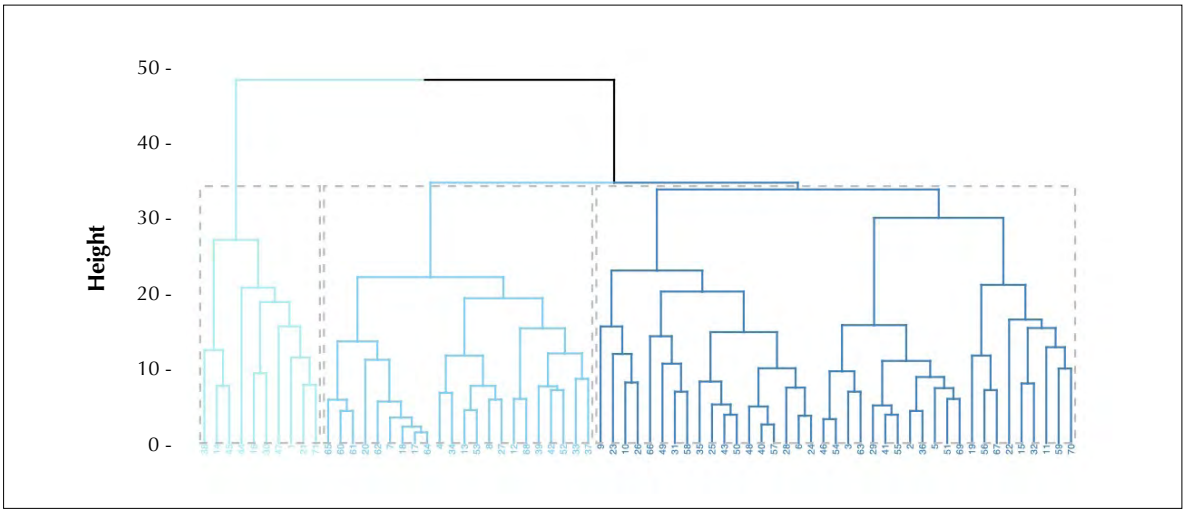
37 Hadley Wickham, *Ggplot2: Elegant Graphics for Data Analysis* (New York: Springer-Verlag, 2016); R Core Team, *R: A language and environment for statistical computing. R Foundation for Statistical Computing,* (Vienna, Austria, 2019) available at https://www.R-project.org/

activity as a non-political exercise that consists mainly of the application of legal norms instead of weighing different principles or taking into consideration ethical, moral, or political values in difficult cases. Despite this fact, in recent decades, non-positivist conceptions (such as post-positivism) have begun to spread among the Mexican legal community, allowing judges to respond to the new constitutional requirements.

We first conducted a hierarchical cluster analysis using R to determine the type of legal conceptions that prevail among judges.[38] We wanted to know the number of clusters that would be sufficient for our analysis.

For the analysis, we used 12 variables (see Table 1) that measure some features of the judges' legal conceptions. To conduct the analysis, we first omitted missing values. We did not proceed to standardize the data because it has the same measurement scale. Then, we computed dissimilarity values with Euclidian distance and took these values for the analysis. We performed agglomerative hierarchical clustering and used Ward's linkage method because it reports a more balanced clustering structure. Each judge (x-axis) was grouped in a cluster depending on the values of the answer he/she provided for each of the 12 variables used for the analysis. We obtained two distinct groups, each containing a different number of clusters: at the height of 25 (y-axis), the left-hand group contains one cluster, while the right-hand contains two. We highlighted these three different clusters because they grouped together enough judges to conduct a reliable analysis (Figure 1).

Figure 1. Types of Judges by Legal Conceptions



Source: Judicial Power in Mexico Database (2019).

These clusters include judges with different legal conceptions. To determine the type of legal conception that the judges hold in each group, we computed each group's mean values for the 12 variables included in the cluster analysis. On average, to a different extent, all three

38 Wickham, *op, cit.*; R Core Team, *R: op.cit.*

groups have post-positivist features. We identified judges with formalist positivist conceptions, positivist constitutionalist conceptions, and post-positivist conceptions (Table 1).

Table 1. Configurations of Judges' Legal Conceptions (Cluster Means)

	Formalist-Positivist	Positivist-Constitutionalist	Post-Positivist
1. Judges are political actors	5.9	6.6	7.2
2. Judges are apolitical	6.5	7.0	2.1
3. Judges have a legislative role	3.2	7.6	6.3
4. Creativity in judicial rulemaking	2.7	9.1	9.6
5. Apply the law strictly	5.8	1.8	1.7
6. All constitutional norms are fair	7.5	5.4	3.5
7. Positivist judicial network	2.7	4.6	2.0
8. Constitutionalist judicial network	9.5	7.9	9.6
9. Weighting of the law1	8.7	7.8	8.9
10. Judicial creation of the law is illegitimate	7.0	2.3	1.2
11. Weighing of the law2	8.6	8.8	9.6
12. Judicial law creation	4.9	9.4	9.3

Source: Judicial Power in Mexico Database (2019). Variables are coded on a scale that goes from 1 (strongly disagree) to 10 (strongly agree). Questions 2, 5, 6, 7, and 10 are positivist-oriented, while the others are post-positivist-oriented.

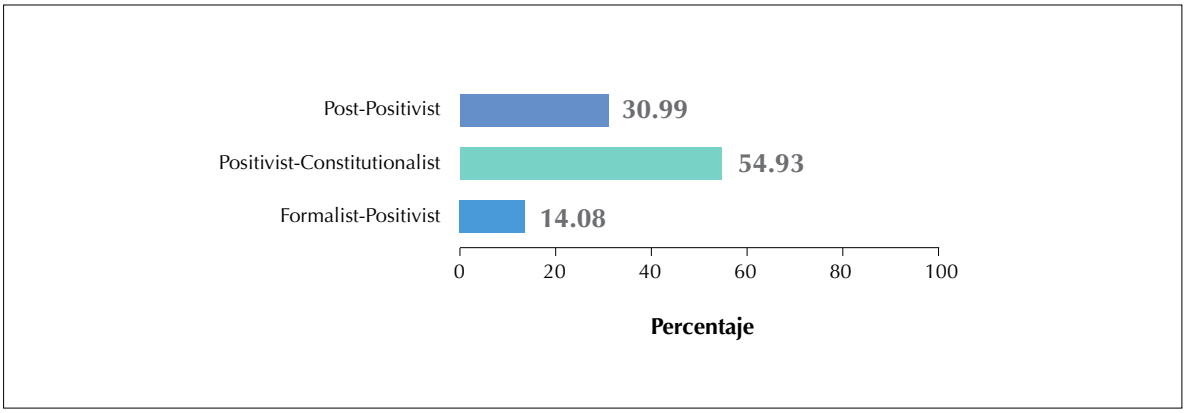
Formalist-positivist judges are those who consider that "all constitutional norms are fair" (7.5) only because there are positivized, and the judicial creation of law is illegitimate (7), given that law can be created only by representatives. These judges would classify clearly as legal positivists. We can call them also false positivists because their answers show serious inconsistencies. While they tend to support the idea of weighing and interpreting the law (8.7) and claim to be surrounded by a network of constitutionalist judges (9.5), they deny their role in the judicial creation of law (4.9) or having a legislative role (3.2). In other words, judges in this category do not want to portray themselves as pure formalists, but their ideas do not adequately correspond to the post-positivist legal conception.

Judges in the group called Positivist-constitutionalist provide answers that tend to reflect post-positivist legal conceptions but are not strongly persuaded of ideas such as that of judges as political actors (6.2). They tend to show more agreement with the idea that judges are apolitical (7) than formalist-positivists. Additionally, judges in this group tend to be partially deferential to the legislative power considering that "norms are fair" given their constitutional status (5.4). The judges grouped in this category also present inconsistencies in their answers, but not as drastically as the Formalist-positivists. Their position seems to be moderate, admitting the limitations of the classical positivist thesis, but without fully admitting the role of the post-positivist judge who weighs principles, offers legal reasoning that can create new law, and who plays an active role in the politics of rights.

Judges in the Post-positivist group tend to define themselves as political actors (7.2) with the power to create law (9.3) and weigh different principles (9.6). They also categorically reject the idea that judges should mechanically apply the law (1.7), that judicial creation of law is illegitimate (1.2) or that all constitutional norms are fair (3.5). This category of judges is the furthest removed from the classical thesis of legal positivism and represents more accurately the thesis of legal post-positivism, favoring the creativity of judges in judicial rulemaking (9.6).

We found that most judges (55%) are concentrated on the positivist-constitutionalist cluster. More than an eighth of our sample (14%) clusters in the formalist-positivist group, which is the group that shares more features with a traditional positivist legal conception. Finally, and contrary to our expectations, the second most populated cluster is the one that groups judges with post-positivist legal conceptions (31%) (Graph 1).

Graph 1. Legal Conceptions in the Mexican Federal Judiciary



Source: Judicial Power in Mexico Database (2019).

Based on these data, we could say that almost 70% (Positivist-constitutionalists and Formalist-positivists) of the federal judges in Mexico retain key aspects of legal positivism, such as denying the active role judges play in the political arena but also have acquired several post-positivists features as weighing norms and principles when deciding complex cases. How can we explain and interpret these results?

We computed binomial logistic regressions using the data obtained from the hierarchical cluster analysis to answer this question. Binomial logistic regression is an appropriate method to determine the association between two variables when the dependent variable is categorical. We run different separate models using as dependent variables: 1) post-positivist legal conceptions; 2) positivist-constitutionalist legal conceptions; and 3) positivist-formalist. These are dummy variables in which 1 reports the presence of the aspect (i.e., post-positivist) and 0 means its absence. We wanted to determine the role that variables such as "Model of education" and "Level of education" play in shaping legal conceptions. These are categorical variables with two (0 = passive methodologies; 1 = active methodologies) and four categories (4 = bachelor; 5 = specialization; 6 = master; 7 = PhD) respectively. In the regression models, we also included political ideology, gender, and age as control variables. Coefficients with and without control variables remained mostly the same.

The results indicate that the variable "Model of education" (EduModel1: active methodology) has a significant effect on the probability of holding a post-positivist legal conception (significance at the level of 0.05) and its odds ratio (above 3) tells us that there is a positive relationship between claiming to have studied under a "Model of education" that privileges an active methodology (EduModel1) and holding a post-positivist legal conception. In this regression, the Nagelkerke coefficient (*pseudo* R^2) is 0.230 (See Model Post-Positivist in Table 2).

Table 2. Binomial Logistic Regressions for Three Models of Legal Conceptions

	Statistics	Model Post-Positivist	Model PConstitutionalist	Model PFormalist
Model of Education(active)	Pr(>|z|)	0.05.	0.004**	0.170
	Std. Error	0.585	0.596	0.916
	OR	3.090	0.190	3.510
Level of Education(Master)	Pr(>|z|)	0.814	0.935	0.538
	Std. Error	0.992	0.936	1.880
	OR	1.260	1.080	0.310
Level of Education(PhD)	Pr(>|z|)	0.723	0.986	0.501
	Std. Error	1.171	1.115	1.997
	OR	0.660	0.980	3.830
	Cox & Snell R^2	0.163	0.234	0.288
	Nagelkerke R^2	0.230	0.313	0.517
	McFadden R^2	0.144	0.194	0.417

N = 71; Control variables: Ideology, Independence, Gender, Age.
Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1.

Source: Judicial Power in Mexico Database (2019).

Consequently, judges exposed to theories of argumentation and who learned through the analysis of judicial decisions rather than by reading and memorizing legal codes have three times higher probabilities of being post-positivists than those who did not study under this type of legal educational model. Indeed, the logistic regression model that considers the Positivist-constitutionalist group of judges as the dependent variable (see Table 2) also confirms this assertion.

The relationship between an educational model based on an active methodology and a Positivist-constitutionalist legal conception is negative (odds ratio below 1) and significant at the level of 0.001 (p-value 0.004). Indeed, the odds ratios (OR = 0.190) of the variable "Model of education" tells us that the odds of having a Positivist-constitutionalist legal conception are almost 80% lower when a judge has studied under an educational model based on active

methodologies compared to not having experience with this model during his/her studies. In other words, as the odds of having a positivist-constitutionalist conception decrease, the probability of claiming to have studied under a model education that used an active methodology increases as opposed to the claim of not having studied under this model (See Table 2). Note, however, that the last model, which includes the group of judges with Formalist-positivist legal conceptions, does not show a significant association between the variables (p-value = 0.170). Finally, from the three different models, we can also conclude that the "Level of education" has no significant effect on the shaping of legal conceptions.

Regarding the control variables, only the gender variable was significant (at the level of 0.1) in its association with a post-positivist legal conception, but also negative (odds ratio 0.21), that is, that the odds of having a post-positivist legal conception decreases in 79% when a judge is a woman. This association is strongly confirmed by the regression in the third model (positivist-formalist), that is, being a woman is significantly (at the level 0.001) and positively associated (odds ratio greater than 1) with having a positivist-formalist legal conception. The fact that female judges tend to have a less post-positivist legal conception than male judges might be related to the fact that it is more difficult for women than for male judges to participate in courses and postgraduate studies that expose them to new legal theories, particularly post-positivist legal theories. Many female judges are working mothers. Another possibility may be that in the judicial career it is more difficult for female than for male judges to get promoted, so their legal conceptions would tend to follow a more formalistic model that does not generate disruptive decisions beyond the traditional model.

Therefore, we can conclude that the model of education has an important effect on shaping the judges' legal conceptions, mainly when the judges are post-positivists and positivist-constitutionalists but not when they hold a formalist-positivist legal conception. Thus, the way they are trained in learning the law affects the way they envision the relations among law, morals, and politics, as well as what matters (principles, rules, or beliefs) when they must decide a case and issue a decision.

V. DISCUSSION

The results obtained allowed us to identify three clusters that, although designed to distinguish judges' legal conceptions, do not entirely correspond to the ideal models discussed by philosophers of law. Instead, these clusters reflect the modulations required by the context in which judges perform their duties. Despite this fact, we may assert that formalist-positivists share ideas about the strict application of the law and deny their political role in decision making, bringing them closer to the Kelsenian claims on legal positivism.[39] Positivist-constitutionalists are very well defined by Ferrojoli's understanding of the role of judges in constitutional democracies, recognizing principles but rejecting judicial activism and the judicial creation of law.[40] Finally, post-positivists represent the idea of judges being guided by the constitution

39 Hans Kelsen, *General Theory of Norms* (Oxford: Clarendon Press, 1991).

40 Luigi Ferrajoli, "Constitucionalismo principalista y constitucionalismo garantista" in *Doxa. Cuadernos de Filosofía del Derecho,* N. 34 (2011): 15-53, Doi:10.14198/DOXA2011.34.02.

but also interpreting, weighing norms, and having no fear of playing an active role in judicial decision-making (Atienza). That is, to create new rules after reasoned argumentation and interpretation of written laws.

We show that the three different configurations of judges' legal conceptions identified in the previous section, and particularly the spread of post-positivist and positivist-constitutionalists legal conceptions, are related to the model of education (active vs. passive methodologies). Our regression results confirm an important effect of the type of educational model on the judges' legal conceptions. We found a significant relationship between a model of education based on active methodologies and judges with post-positivist legal conceptions. Thus, we can argue that the way law is taught at universities is of the outmost importance for the type of legal conception judges hold and reproduce, and for the type of performance judges will display in the bench. These findings are telling because they emphasize law schools' crucial role in shaping how judges understand their political and social roles when deciding cases and the way there are called upon to protect rights and decide disputes among different powers. Thus, based on the data analyzed, we can confirm that a model of education based on active methodologies tends to shape and reproduce post-positivist legal conceptions among judges.

The results regarding the level of education are also interesting since, contrary to our expectations, a higher degree of education does not have a significant effect on shaping the judges' legal conceptions. That is, more years of education (i.e., holding a Ph. D.) seems to be an aspect that is not relevant in determining the legal conception of judges; this might be explained by the fact that the models of education at the universities judges attend for postgraduate studies are based on passive-methodologies such as memorization, lecture-style classes, or a dogmatic and abstract study of law.

A different fact that might have yielded these various types of legal conceptions among judges can be associated to the constitutionalizing of human rights. In Mexico, for example, we can point to the 2011 constitutional reform of human rights as a turning point that affected how judges adopt positions against legal paradigms such as legal positivism or post-positivism.

The legal context of the past two decades is mediated by the constitutionalizing of legal systems, which entailed recognizing the existence and validity of rules and principles. The extent to which these rules and principles are conceived in judicial reasoning varies across Positivist-formalist and post-positivist. Indeed, some authors distinguish two models of Constitutionalism according to how principles and their relationship to rules are understood: on the one hand, principled constitutionalism and, on the other, positivist constitutionalism.[41] This might also explain why some judges are still reluctant to embrace a more active role in the creation and configuration of law that changes the *status quo*.

Contrary to what was expected, most judges in our sample were concentrated in the Positivist-constitutionalist legal conception. These judges represent the combination of the still dominant tradition of legal positivism in lawyers' training and the constitutionalizing of human rights in Mexico that occurred in the past decade and are a result thereof. Note that this might also be an effect of the size of our sample and of the judges' "self-selection" to participate in the survey. Nevertheless, this finding is interesting as it allows us to move away from stereotypes: legal positivism is still a functional and operative conception among judges, although

41 Ferrajoli, Constitucionalismo principalista y constitucionalismo garantista; Luigi Ferrajoli and Juan Ruíz Manero. *Dos modelos de constitucionalismo. Una conversación* (Madrid: Trotta, 2013).

we begin to identify several features of post-positivism. Formalistic positivism, however, is not entirely displaced. In the answers of judges, we still find judges that are reluctant to accept a creative and active role in judicial decision-making. Furthermore, the judicial function is still conceived as an exercise consisting in the strict application of the National Law —as the primary source of law— which cannot go beyond it without risking a breach of democracy's majoritarian principle or the separation of powers.

Regarding non-positivist conceptions, such as post-positivism, it is important to note that this is the second-largest group of responses in our sample, which led us to conclude that there seems to be a growing awareness of the critical role played by the judge in the social practice of law and in the configuration of a Constitutional State. However, it must be noted that the judges interviewed belong to a sector that has received higher training in this regard in Mexico, since the demands of the human rights reform fell primarily on them. Judges in our survey work at the federal level; their decisions are public and are constantly scrutinized. The broader sector of judges operating at the State level work under very different conditions. Local judiciaries are opaquer and often work in more precarious conditions. We must therefore be aware of this bias and not conclude that these results show a complete and accurate picture of the Mexican judiciary.

VI. CONCLUSION

Judges are political actors whose decisions matter for social and public life. In democracies with a civil-law tradition, judges still need to understand their political role and contribute to protecting and expanding rights that are breached or not guaranteed by other political authorities. As stated in the introduction, this behavior might result both from internal and external factors. In this paper, we sat at the same table two disciplines: judicial politics and philosophy of law. To better capture ideational explanations for judicial behavior, we discussed and operationalized two of the most important and widespread legal conceptions in the past 50 years in the Latin-American world. Then, using the case of federal judges in Mexico, we identified different groups of judges with diverse, but not significantly different legal conceptions. These results might be related to the size of our sample; nevertheless, the results obtained depict the legal ideas of a part of a "unique" community, and a significant association between the judges' legal conceptions and the model of education under which they claim to have studied during their careers. This finding tells us that legal education should be more seriously examined in countries such as those in Latin America if we are to have judges that go beyond what is written in the legal codes when deciding hard cases.

Our work intends to contribute to a better understanding of the judges' ideas. Yet, to ascertain the role that judges legal conceptions play in judicial decision-making, future research should use judicial decisions to test the extent to which formalist-positivists, positivist-constitutionalists, or post-positivists decide as they preach. That is, we cannot ignore that the way judges describe themselves might be different from the way judges decide. No judge would feel comfortable describing himself/herself as a positivist or a formalist, while they will find it very appealing to portray themselves as post-positivist judges and guardians of rights and democracy.

BIBLIOGRAPHY

1. Aguiló, Josep. "Ética judicial y Estado de Derecho". In *El buen jurista. Deontología del Derecho*, Cristina García Pascual, edited, Tirant lo Blanch, Valencia: 2013.
2. Alchourrón, Carlos and Eugenio Bulygin. *Introducción a la metodología de las ciencias jurídicas y sociales*. Buenos Aires: Astrea, 1998.
3. Alexy, Robert. *El concepto y la validez del Derecho*. Barcelona: Gedisa, 1994.
4. Alexy, Robert. *Teoría de la argumentación jurídica*. Madrid: Centro de Estudios
5. Constitucionales, 2007.
6. Alexy, Robert. *La doble naturaleza del Derecho.* Madrid: Editorial Trotta, 2016.
7. Atkinson Rowland and John Flint. "Accessing Hidden and Hard-to-Reach Populations: Snowball Research Strategies". *Social Research UPDATE*, N 33 (2001).
8. Almond, Gabriel. *A Discipline Divided: Schools and Sects in Political Science*. London and Newbury Park, CA.: Sage Publications, 1990.
9. Atienza, Manuel and Juan Ruiz Manero. "Dejemos atrás el positivismo". *Isonomía* N. 27 (2007): 7-28.
10. Atienza, Manuel. "Cómo desenmascarar a un formalista". *Isonomía,* N. 34 (2011): 199-201.
11. Atienza, Manuel. *Filosofía del Derecho y transformación social*. Madrid: Editorial Trotta, 2017.
12. Bobbio, Norberto. *El problema del positivismo jurídico*. Ciudad de México: Distribuciones Fontamara, 1997.
13. Cevallos, Danny José. "Notas sobre la enseñanza del Derecho en el Estado Constitucional". *Derecho Constitucional para el siglo XXI*. Guayaquil: Universidad Católica de Santiago de Guayaquil, (2020): 29-44.
14. Couso, Javier. "The Transformation of Constitutional Discourse and the Judicialization of Politics in Latin America". In *Cultures of Legality: Judicialization and Political Activism in Latin America,* edited by Javier Couso, Alexandra Huneeus and Rachel Sieder. Cambridge: Cambridge University Press, 141-160, 2010.
15. Couso, Javier, Alexandra Huneeus, and Rachel Sieder, eds. *Cultures of Legality: Judicialization and Political Activism in Latin America*. Cambridge: Cambridge University Press, 2010.
16. Couso, Javier, and Lisa Hilbink. "From Quietism to Incipient Activism". In *Courts in Latin America,* edited by Gretchen Helmke and Julio Rios-Figueroa. Cambridge: Cambridge University Press, 99-127, 2011.
17. Dworkin, Ronald. *Law's Empire*. London: Fontana Press, 1986.
18. Dworkin, Ronald "¿Deben nuestros jueces ser filósofos? ¿Pueden ser filósofos?" *Isonomía*, N. ° 32 (2010): 7-29.
19. Dworkin, Ronald. *Justice for Hedgehogs*. Cambridge: Harvard University Press, 2011.
20. Epstein Lee and Jack Knight. *The Choices Justices Make*. Washington, DC: CQ Press, 1998.
21. Ferrajoli, Luigi. "Constitucionalismo principalista y constitucionalismo garantista". *Doxa. Cuadernos de Filosofía del Derecho,* N. 34 (2011): 15-53, Doi:10.14198/DOXA2011.34.02

22. Ferrajoli, Luigi and Juan Ruiz Manero. *Dos modelos de constitucionalismo. Una conversación*. Madrid: Trotta, 2013.
23. Ferrajoli, Luigi. "Sobre la Enseñanza del Derecho". *Boletín informativo Juezas y jueces para la democracia,* N. 82 (2021): 12–20.
24. Ferrer, Jordi and Giovanni Ratti, eds. *El realismo jurídico genovés.* Madrid: Marcial Pons, 2011.
25. González-Ocantos, Ezequiel. *Shifting Legal Visions. Judicial Change and Human Rights Trials in Latin America*. Cambridge: Cambridge University Press, 2016.
26. Guarnieri, Carlo. *Giustizia e Politica. I nodi della Seconda Repubblica.* Bologna: Il Mulino, 2003.
27. Guastini, Riccardo. *La sintaxis del Derecho*. Madrid: Marcial Pons, 2016.
28. Hart, Herbert. *The Concept of Law.* Oxford: Clarendon Press, 2011.
29. Hart, Herbert. "Positivism and the Separation of Law and Morals". *Harvard Law Review* 71, N. 4 (1958): 593-629, doi:10.2307/1338225
30. Hilbink, Lisa. *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile.* Cambridge: Cambridge University Press, 2007.
31. Kelsen, Hans. *General Theory of Norms*. Oxford: Clarendon Press, 1991.
32. Kelsen, Hans. *Teoría pura del Derecho*. Ciudad de México: Universidad Autónoma de México, 1982.
33. Kennedy, Duncan. "Freedom and Constraint in Adjudication: A Critical Phenomenology". *Journal of Legal Education* 36 N. 4 (1986): 518-562.
34. Laporta, Francisco. "A modo de introducción: la naturaleza de las reflexiones sobre la enseñanza del derecho". *La enseñanza del derecho*, N. 6 (2002): 13-26.
35. Laporta, Francisco. "Notas sobre el estudio y la enseñanza del derecho". *Sistema*: *Revista de ciencias sociales,* N. 24-25 (1978): 107-112.
36. Lista, Carlos, and Ana María Brigid. *La enseñanza del derecho y la formación de la conciencia jurídica*. Córdoba: Sima Editora, 2002.
37. MacCormick, Neil. *Legal Reasoning and Legal Theory*. Oxford: Clarendon Press, *2003*.
38. Moreso, Josep Joan and Josep M.Vilajosana. *Introducción a la teoría del Derecho.* Madrid: Marcial Pons, 2004.
39. Moreso, Josep Joan. "Positivismo jurídico contemporáneo". *Enciclopedia de Filosofía y Teoría del Derecho,* N. 1 (2015): 171-205.
40. Nino, Carlos Santiago. *Introducción al análisis del Derecho.* Buenos Aires: Editorial Astrea, 2003.
41. Nino, Carlos Santiago. *Algunos modelos metodológicos de ciencia jurídica*. Ciudad de México: Fontamara, 2007.
42. Nino, Carlos Santiago. *Derecho, moral y política. Una revisión de la teoría general del Derecho*. Buenos Aires: Siglo Veintiuno Editores, 2014.
43. Olivecrona, Karl. *Law as Fact.* London: Stevens & Sons, 1971.
44. Pérez Lledó, Juan Antonio. *El movimiento Critical Legal Studies.* Madrid: Editorial Tecnos, 1996.
45. Pérez Lledó, Juan Antonio. "Teoría y práctica en la enseñanza del Derecho". *Academia. Revista sobre enseñanza del Derecho* 5, N. 9 (2007): 85-189.

46. R Core Team, *R: A language and environment for statistical computing. R Foundation for Statistical Computing,* (Vienna, Austria, 2019) available at https://www.R-project.org/

47. Raz, Joseph. *Practical Reasons and Norms.* Cambridge: Oxford University Press, 1999.

48. Torres, Ilsse. "La falsa oposición entre teoría y práctica en la educación jurídica". *Revista de Educación y Derecho*, N. 22 (2020): 1-22.

49. Tourangeau, Roger. "Defining Hard-to-Survey Populations". In *Hard to Survey Populations,* edited by Roger Tourangeau, Brad Edwards, Timothy P. Johnson, Kirk M. Wolter and Nancy Bates, 3–20. Cambridge: Cambridge University Press, 2014.

50. Segal Jeffrey and Harold Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press, 2002.

51. Vázquez, Rodolfo. "Concepciones Filosóficas y Enseñanza del Derecho". *Academia. Revista sobre la enseñanza del Derecho* N. 12 (2008): 221–237.

52. Wickham, Hadley. *ggplot2: Elegant Graphics for Data Analysis*. New York: Springer-Verlag, 2016.