The Constitution of Mexico

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I. Constitutionalism and Constitutions in Mexico

The construction of constitutionalism in Mexico, even if understood in the minimal sense that correlates this notion with the idea of government limited by law,[1] has not been easy. How and to what extent the approval of a written Constitution, following certain critical lines, could help the country approach that ideal —progressively enriched with liberal, republican, federal, secular, democratic, social and multicultural components—was cause of intense debate and struggle during the 19th and 20th centuries. Historians, political scientists and lawyers have recently emphasized the richness of constitutional thinking in Latin America in the first half of the 19th century, in contrast with a historiographical tradition in whose context the political history of the region came down to chaos and caudillos.[2] Because or in spite of this, Mexico did not attain a minimal constitutional continuity —and exclusively at the formal level— until the approval of the liberal Constitution of 1857.

The first constitution of Mexico was the Constitution of 1824, though the 1812 Constitution of Cádiz was twice temporarily in force and played an important role in the triggering of the political dynamics of the day, and two years later, in 1814, an innovative liberal and republican Constitution was promulgated in Apatzingán yet lacked the conditions to enter into force. The federal 1824 Constitution was replaced by two centralist and more conservative Constitutions —the Constitution of 1836, known as "las Siete Leyes" (the Seven Statutes) and the Constitution of 1843—, and later by the Constitution of 1847, officially named "Acta Constitutiva y de Reformas." This last document reinstalled the federal structure and is frequently remembered by the fact it was the first federal constitution that included the writ of *amparo,* the path-breaking rights-protective writ that had been crafted shortly before by Manuel Crescencio Rejón and included in the Yucatán Constitution of 1841.[3]

The second half of the 19th century was integrally spent under the 1857 Constitution, a liberal document that proclaimed religious liberty and secular education, instructing the alienation of the Church properties and the ending of its special jurisdiction. In fact, however, the document was only intermittently in force, as the country remained caught in episodes of civil war and foreign invasion or intervention, and strained between very different political projects —from the

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[1] Waluchow 2014, Walker 2010: 209.
[2] Breña 2012: 47, 3; Gargarella 2010 and the contribution in this volume.
[3] Fix-Zamudio & Ferrer 2006: 465.

liberalization and secularization program promoted by Benito Juárez to the "order and progress" policies championed by Porfirio Díaz, who favored foreign investment and oligarchic control of resources, while curbing social unrest by ever more authoritarian means.

The effects of gross economic exclusion, extreme land concentration and political repression that prevailed during the thirty years of Porfirian presidential rule (1876-1911) fed the climate that led to the Mexican revolution and the subsequent approval of the Constitution of 1917. As Luna, Mijangos and Rojas remark, contrary to what is often assumed, 20th century revolutionaries did not totally abjure from the 19th century constitutional tradition: they struggled to replace the liberal-conservative codification of the old order through redistribution by enshrining social rights requiring land reform, state control of natural resources, alphabetization and urbanization, but did not seek to eradicate the principles of (male) representative government nor the body of civil and political rights inherited from the tradition inaugurated in Cádiz.[4] It was in dialogue with the past, therefore —and, in Gargarella's view, with the associated cost of not actually debunking the institutional resorts of inequality[5]— that the Constitution of Querétaro set forth, in 1917 —before the October Revolution, before Weimar— its ambitious program of social transformation. The Querétaro assembly was in fact formally convened to discuss the reform of the 1857 Constitution; and while the end-result was conceptually different, the new text kept many institutional and regulatory choices from its predecessor —Elkins, Ginsburg and Melton, using their "similarity index", find an 87% overlap in the range of topics covered by the two.[6]

In the ensuing decades, the country found stability along a process in which the Mexican state apparatus grew dramatically and asserted an unprecedented degree of control over people and territory. This was done, however, under the lead of a single political force that, with different denominations —remaining *Partido Revolucionario Institucional*, or "PRI", from 1946 onwards— gradually installed a hegemonic party system that controlled all power resorts. As Casar remarks echoing Sundquist, what the Constitution separates, the elector can unite.[7] And while the PRI formally honored many of the rituals prescribed by formal constitutional rules, political and social dynamics could not be more distant from the deep grammar of constitutionalism and democracy. The seventy years of PRI effectively suffocated political pluralism in a context in which cooptation of interest groups, power-sharing and strategic circulation of elites replaced the dynamics of contestation and representation, effectively preventing the operation of both democracy and the rule of law.

One hundred years later, the 1917 Constitution is still the Constitution of Mexico, this country being one of the very few in Latin America to have transitioned to democracy from authoritarian rule without enacting a new constitution.[8] The Mexican pattern —both at the political and the

[4] Luna, Mijangos & Rojas 2012: 12.
[5] Gargarella 2010, 2013.
[6] Elkins, Ginsburg & Melton 2009: 57.
[7] Casar 2010: 130 (citing Sundquist 1994).
[8] Negretto 2012.

legal level— has been *reformismo*: gradualism. And gradualism has translated or been reflected into around 700 constitutional amendments, which have profoundly altered the initial document.

The Mexican constitution is today an extremely long text, puzzling and confusing in many ways. For starters, it is swamped with the sort of detailed provisions one would expect to see in a code, or in a governmental regulation, not in a Constitution. The Constitution includes, to mention a few examples out of countless others, a detailed regulation of the institution that guarantees access to state information (article 6 VIII) (892 words), of the Federal Commission of Economic Competence and the Federal Institute of Telecommunications (article 28) (2,080 words); or of the National Electoral Institute and the way it must deal with political parties and campaign regulation (article 41) (4,052 words), to the extreme of entrenching the number of minutes in radio and TV that political parties and electoral authorities will enjoy (article 41.A.a-g)). The Constitution needs 3,670 words to enshrine the right to property (article 27), 4,820 to expound the basic approach to the economy and the management of natural resources (articles 25, 26, 28), and 4,627 to delimitate the jurisdiction of the federal judiciary (articles 103 and 107). Just mentally compare these numbers with the standard length of an academic paper. In Mexico, in sum, to put it in Elkins, Ginsburg & Melton's terms, big C (the constitutional document) reaches out to small c (the larger constitutional system) to a far greater extent than in other countries.[9]

Second, it is a profoundly disorganized text. To ascertain whom and in what conditions can be a person detained, for instance, one must carefully go down the stuffed article 16, don't be distracted with the other matters regulated there, skip articles 17 and 18, focused on other rights, and resume at article 19, where one finally finds out what happens when a detainee reaches a supervising judge. The right to equality, on its part, is enshrined in article 1 in apparently encompassing terms —that include protection about gender discrimination— but we later find, in article 4, sharing space in a list of social rights, the declaration that "man and woman are equal before the law." Article 73, to give a further example, presents itself as the list of areas of federal jurisdiction, but the fact is that both before —in articles 4, 6, 18, and 21, for instance— and after —in arts. 108, 109, among others— one finds functionally equivalent provisions setting forth the distribution of federal and state jurisdiction in the corresponding fields. From a more architectural viewpoint, disorder is again the rule. There is no harmony in the internal subdivision of the text, since there are Titles with more than fifty articles (Title III) and others (Titles VI, VIII and IX) that contain a single one! And the formal organization is often misleading: Title I, for instance (containing articles 1-29), is entitled "rights and guarantees", but there are important rights at a far distance —labor rights in article 123, to raise an iconic example—, while jurisdictional and non-jurisdictional guarantees are not found there, but rather at distant articles 94-107.

Finally, the Mexican constitution is very heterogeneous, both in terms of style —since old and new writing styles or techniques coexist—and in terms of content. One hundred years of reforms have had an intense dilution effect in terms of constitutional identity. State secularism, collective land property, or federalism, for instance, were all core constitutional choices that gave singularity to

[9] Elkins, Ginsburg & Melton 2009: 39.

the Querétaro document. Today, they subsist in the context of a constitution that allows peasants to manage their lands under the rules of the market, centralizes immense and ever growing areas of jurisdiction in the hands of the federation, and complements state secularism (and limits on the priests' political rights) with a now enlarged protection of public religious life in the terms we find in any standard liberal democracy —all of that surrounded by a great quantity of new constitutional topics that diminish the relative weight of those initial options. The amendment pattern has been accumulation, not substitution, and this has left the text with many incoherencies and contradictions.

None of the features we have brought up so far is particularly good news for the cause of constitutional democracy. It is true that constitutional design does not entirely determine health and disease in actual constitutional life. But in a country where constitutionalism and democracy have been so weak, faced with giant challenges in terms of economic deprivation, inequality and violence, having such an exceedingly complex document, approved a century ago, does not look promising. It is a constitution that political elites manipulate at will, and its obscurity and gigantism obstructs its legal functions. As we will see, it contains inspiring language and clauses with great transformative potential. But its contorted overall makeup somehow reflects the contorted nature of the political and social processes and backgrounds it is supposed to articulate. Let's attempt in what follows a (necessarily non-exhaustive) description of this long, complex and ever changing constitution.

II. Rights: between national and international

The Constitution of 1917 included most rights present in the Constitution of 1857 —like freedom of speech and assembly, prohibition of cruel and unusual punishments, or the right to bear arms— but famously added, as we already mentioned, path-breaking provisions guaranteeing free public education, labor rights, and land restitution and redistribution. Articles 3, 27 or 123 still contain traces of those distinctive initial moves. Article 27, for instance, retains the banning of large states, the limitation in the amount of rural property corporations can own, or the institution of *ejido* and communal lands, placed under special authority structures presided over by peasant assemblies and "comisariados ejidales" —though the amendments that in the 90s allowed the parceling and individual adjudication of these lands, the cession of their use, and the association between peasants and third-parties for their exploitation significantly changed the nature of the system.[10]

As decades passed by, however, the 1917 document started to age, in comparison with the powerful rights-centered post-war Constitutions approved elsewhere to reinstall democracy under parameters capable of more effectively preventing majoritarian abuse. Thus, the piecemeal

[10] Land restitution and redistribution begun at the statutory level before the approval of the Constitution and continued afterwards. The initial 1917 text did not mention the "ejido" by the name, though recognized the communal property of several communities and groups. The word appears in 1934, just before president Cárdenas' (1934-1940) first great distribution plan, which conferred almost 18,000,000 Ha to more than 800,000 peasants. See Mendieta 1960, Zúñiga & Castillo 2010, Saffon in this volume.

addition of fundamental rights to the Constitution became a hallmark of constitutional dynamics from the late nineties onwards. Along this way the Constitution added, for instance, a consequential package of rights for indigenous individuals and communities, now declared to be the foundation of the nation and endowed with autonomy, accommodation and recognition rights (article 2); a generous list of third-generation rights, including the right to access state information (article 6), the right to data protection (article 16) and the rights to enjoy a healthy environment, nutritive food, clean water, identity and prompt registration at birth, cultural life, and the practice of sports (all of them in article 4); the right to compensation before irregular state conduct (article 113); the rights of the children (article 4); or the rights of victims in criminal proceedings (article 20), among many others.[11] Amendments have moreover expanded —with few exceptions— pre-existing rights, particularly in the domain of equality —where the Constitution now offers protection against discrimination based on a generous list of grounds, including "social condition, sexual preferences, marital status and any other violating human dignity and having the goal of annulling or diminishing the rights and freedoms of the people" though falling short of including a clause of material equality—, defense and due process rights —spelled out in detail in the context of criminal proceedings re-designed as adversarial in 2008 and now finally including the presumption of innocence—, education —where free public education now reaches up to High School— and even, if timidly, nationality —since double nationality is now permitted, and foreign citizens have gained the right to a hearing before the state decides, on the widest grounds, on their expulsion (article 33).

The mention of nationality gives us occasion to emphasize that, in contrast with the generosity it displays in other aspects, the Mexican bill of rights is also singularized by the substandard treatment dispensed to certain categories of subjects, like people in prison or under "organized crime" charges, or foreign and naturalized citizens. The latter are denied in Mexico the right to associate or assemble "in political matters" (article 9) and subject to a general prohibition of "meddling with political affairs by any means" (article 33), provisions whose uncertain reach has an intense chilling effect, very problematic to develop many social and professional activities. Traditionally, moreover, article 33 would famously say that the "Executive has the exclusive faculty to make any foreign individual that she considers inconvenient abandon the national territory, immediately and without previous trial." After the 2011 reform, this article now grants a hearing before the dismissal, and says it must be based on statutorily pre-established causes. The reform did not eliminate, however, neither the "meddling" clauses nor the mention to "pernicious foreigners" we find elsewhere (article 11), nor the imperative "to always prefer Mexicans over foreigners in equal circumstances, for all employments, posts or governmental commissions whenever the status of citizen is not indispensable" (article 32). Moreover, the amount of jobs and posts in the administration, the judiciary or the army specifically reserved to natural-born citizens is astonishing in comparative terms (articles 28.I, 32, 55, 82, 91, 95, 102.A, 116). Lower statutes supplement this pattern —see, for instance, articles 106 and 108 of the Federal Judiciary Organic Statute, requiring natural-born citizenship to be magistrate or judge— transforming citizenship by naturalization into a sort of second-class citizenship.

[11] Carbonell 2014, Pou Giménez 2014a.

In parallel to the addition of an ever-increasing number of rights in the Constitution, Mexico ratified virtually all human rights treaties available, though it was very difficult to detect any sort of daily impact of these bodies of law in the resolution of legal disputes before the judiciary or the administration. The relations between national and international legal sources were traditionally governed by article 133, which holds —in terms analogous to those of article VI of the US Constitution— that "this Constitution, the statutes of the Congress of the Union that emanate from it, and the treaties that are in accordance with it, celebrated and to be celebrated by the President of the Republic with the agreement of the Senate, will be the supreme law of the entire Union". It has been always understood that this article allows for an automatic reception of international law[12] but, as to the hierarchical position of international sources, there is clearly much space for interpretation. In the 90s, the Supreme Court held, first, that treaties and statutes enjoyed the same hierarchical position (1992), to later declare that treaties were rather in an intermediate position: above statues, but below the constitution (1999).[13]

In June 2011, a constitutional amendment was passed —called by everyone "the human rights reform"— that changed the picture in many ways. First, in contrast with the "retail" pattern of rights addition characteristic of previous decades, the Mexican bill of rights underwent a "wholesale" reform that altered its general architecture. Thus, on the one hand, article 1 now declares that the Constitution protects the rights enshrined in its text *plus* all human rights protected in the treaties ratified by Mexico. In contrast with other Latin American constitutions, which include a closed list of the treaties that enjoy constitutional or supra-constitutional status, the Mexican formula is open and, in reaching "rights included in the international treaties of which Mexico is party", it confers constitutional status even to those rights provisions that might be found outside formal human rights treaties —for instance, the right to consular assistance included in the conventions on consular and diplomatic relations. (Non rights-related treaty provisions, by contrast, continue to be governed by article 133 and enjoy therefore supra-legal but infra-constitutional status.) Article 1 moreover includes several formulae, initially developed in the domain of International Human Rights Law, making explicit some of their normative implications. Thus, it proclaims the state duty to respect, protect, and guarantee human rights, under the principles of universality, interdependence, indivisibility and progressivity, and to interpret rights provisions at all times under the *pro persona* principle. It additionally holds that state duties include the prevention, investigation, sanction and reparation of rights violations, further echoing notions that are familiar in the international human rights arena.

The 2011 human rights reform has been celebrated as "a change of paradigm"[14] and it indisputably puts the bill of rights in a new frame. The Mexican constitution was closed and is now

[12] Rodríguez Huerta 2015.
[13] See tesis P. C/92, derived from the AR 2069/91 (1992), and tesis P. LXXVII/99, derived from the AR 1475/98 (1998). In 2007, the Court confirmed the former criterion only that it clarified that treaties were under the constitution but above now more widely defined set of statutes (general statutes, federal statutes and state statutes) (tesis P IX/2007, derived from the AR 120/2002).
[14] Carbonell & Salazar 2011.

an example of the "internationalization of constitutional law";[15] it contained a giant but static pool of fundamental rights and is now a document that urges public authorities to take concrete action to bring these rights to life. What recent developments evince, however, is that the bill of rights is not immune to the adverse effects of the complex mix of past and present that pervades the constitutional system. Following a recurring pattern, the 2011 amendments did not include a cleansing of the provisions incompatible with the new ones: they simply superimposed a "layer" upon the preexisting ones. Thus, article 133, with its undetermined message about the components of the "supreme law of the Union", remained in the books besides article 1's equalization of constitutional and treaty rights. And substantive provisions that clash with those in the treaties, like the regulation of pre-judicial detentions and home arrest in article 16 —more restrictive than the liberty guarantees enshrined in article 7 ACHR—, the regulation of voting rights in article 38 —more restrictive than the one in article 23.2 ACHR—, or the regulation of preventive prison in article 19 —incompatible with article 7.3 ACHR—, among others, were also kept, creating conflicts between norms to which the Constitution purportedly confers equal hierarchy.

This contradictory internal make-up has forced the Mexican Supreme Court to engage in an interpretive *tour de force* that has fueled internal divisions among the Justices, draining energies, creating excessive uncertainty in the community as to the implications of the reforms, and ultimately covering the bill of rights with a patina of technicity and esotericism that does not benefit the efficacy of the Constitution. And while in a first moment —in deciding the Varios 912/2010 case in 2011— the Court said that eventual differences between internal and external sources of rights applicable to a case had to be resolved *pro persona*, i.e., by selecting the provision most beneficial or generous from the perspective of rights enjoyment, later on —in deciding the CT 293/2011 case in 2013, in a scenario of acute internal division that damages the clarity of the holding—, it said that "explicit restrictions on rights" found in the Mexican constitution must always prevail. In these rulings the Supreme Court also put forward its views on the legal status of IACtHR decisions. Quite strikingly, in their regard the Supreme Court also changed its mind but contrary-wise: in the Varios 912/2010 case, it acknowledged the binding status of the rulings where Mexico had been party and said the rest was "orientating"; two years later, in the CT 293/2011, now governing, it declared by contrast that the whole body of Inter-American case-law had to be treated as binding by judges, provided one could not found an internal legal source applicable to the case that was more *pro persona* —more favorable from the perspective of rights enjoyment.

The Court has conducted the debate on the relations between internal and external sources of rights impelled by the need to clarify how to comply with several IACtHR rulings condemning Mexico for the excessive reach of military jurisdiction and the State's systemic failures in investigating and sanctioning forced disappearance, murder and torture. This probably explains why the position of interpretive sources other than Inter-American Court rulings has not been addressed, even if they are all relevant to legal practice under article 1's terms. There is no explicit criterion either on Inter-American sources other than the Court's rulings —the ICHR reports, for

[15] Chang & Yeh 2012, Chehtman in this volume.

instance—, nor on the resolutions of other bodies —those issued by the Covenants' supervising Committees, for instance. In the deliberations on the two reference rulings previously mentioned, the Justices that are generally considered more conservative, which are majority in the Second Chamber, joined by the President of the Court, took the view that the text of the Constitution must never be set aside whatever the treaties might say, and whatever article 1 might say, displaying arguments appealing to the idea of "sovereignty of the constitution" at most; the Justices seen as progressive have taken the view that the most favorable rights clauses —which are found, as to now, in the international sources—must prevail, following the core of article 1's directions. In issuing the CT 293/2011, the Plenary of the Court reached the agreement we described before, which is basically favorable to the nationalist position, though several Justices, writing separately, conditioned their votes to a particular, rights-friendly understanding of the notion of "explicit rights restrictions."

Commentators have for the most criticized the Court.[16] Problems include, at least, the following: first, the Court's zigzagging and deeply divided decisions in this area fail to reassure the legal community that there will not be new changes soon; second, there are internal tensions in the holding of the CT 293/2011, now the leading case, since it is not clear, for instance, what should legal agents do when an IACtHR ruling clashes with an "explicit rights restriction" in the Constitution; third, the Court has not explained what an "explicit restriction on rights" exactly is, assuming this is something to be authoritatively determined case by case by it, no matter the problems this position creates for lower judges; and fourth, the CT 293/2011 makes ultimately prevail the most restrictive norms on rights over the most favorable, curtailing the transformative potential of the human rights reform. If curtailed, however, it has not been totally eradicated and, as we will see, it has triggered noticeable changes in legal practice, particularly before the judiciary. It has dispersed doubts as to the legitimacy of argumentative and procedural moves that had been resisted under the previous constitutional framework, and the Supreme Court itself —at least the First Chamber— has issued innovative rulings that make extensive use of external sources.[17]

The 2011 reform included, as well, changes in the procedural channels for the guarantee of rights (notably in the regulation of writ of *amparo*), in the regulation of emergency states (fewer rights are suspendable now) and in the regulation of Human Rights Commissions (ombudspersons). Though these changes were conceived no doubt with a view on reinforcing rights efficacy, their import is clearly less spectacular than those in article 1 as regards the conception and range of human rights, and their implications in terms of state duties.

The Mexican bill of rights, in short, has been recently subjected to far-reaching changes. It is no doubt one of the most extensive –even in a region where long declarations of rights are the rule[18]– and includes interpretive tools of potentially very large reach. Its transformative impact, however, would have been boosted if amendment authorities had simultaneously eradicated language

[16] See Silva García 2014, Sánchez Gil & Caballero 2017.
[17] Quintana Osuna 2017a.
[18] Uprimny 2015.

obscurities and contradictions, had sought an articulation between the novelties of the bill of rights and the regulation of the horizontal and territorial division of powers, and had simplified the system of jurisdictional guarantees.

III. The current Constitution

1. Separation of powers

To understand how the exercise of state functions is horizontally organized in the Mexican constitution we must focus on two main areas. First, the area traditionally associated to the notion of "separation of powers": the design of the Executive and Legislative Branches, and the set of basic rules providing for their mutual interrelation to prevent power abuse and develop the substantive program of the Constitution. But we must also analyze, second, a constellation that has grown exponentially in recent times: the so-called "autonomous constitutional organisms" (hereinafter "OCAs", "organismos constitucionales autónomos"), more than ten at the moment. Mexican OCAs cover not also the terrain elsewhere occupied by regulatory agencies, but also functions related to the administration of justice, as well as an area that in many countries does not exist: the electoral administration. Given the amount of law-making, supervision, management and adjudication powers these bodies accumulate, portraying the separation of powers without them would be grossly misleading. Let's then focus on those two areas in turn.

Following the rule in America, Mexico adopted and still retains a presidential system of government.[19] This means that the Executive Branch and the Legislative Branch are independent in their emergence and survival, that the President concentrates the functions of Chief of State and Chief of Government, and that the two branches must cooperate and negotiate to fulfill their constitutional responsibilities –in Mexico, broadly along the lines we find in a US-style system of checks and balances, as opposed to a French-style system of "neat separation."

The President is elected by popular vote and holds term for six years, with no possibility of re-election. The non-reelection rule for the President and the rest of major political posts —Deputies, Senators, Municipal Presidents, State Governors— had been considered foundational given the extent to which reelection was abused in the 19th century —Porfirio Díaz having perpetuated himself in power more than thirty years, after ironically claiming power in denounce of the abuse of reelection at the hands of his predecessors. More importantly, non-reelection happened to be immensely functional in assuring a dynamics of elite renovation within the hegemonic party system and in containing accountability claims within narrow limits. Incumbents —and the President above them all— garnered a huge amount of political power for a limited time, and there was little point in criticizing their political actions, since their performance had no impact in avoiding their going home; at the same time, those excluded from the political bargain at any point in time knew they would have the opportunity of going up the political ladder in the political

[19] Ginsburg, Cheibub & Elkins 2012.

renovations occurring at the beginnings of each term. For this very reason, non-reelection has garnered increasing criticism in recent times. This led to a constitutional amendment in 2013 that authorizes (starting in 2018) reelection for up to 12 years for Deputies, Senators and Municipal Presidents, but not for the President of the Republic.

Distinctively enough, there is no Vice-President in Mexico. For one, the permanency of the President in office is assured beyond comparative standards by the fact she cannot be impeached. Impeachment proceeds against most high officials in all branches, but as regards the President, the Constitution exclusively foresees the possibility of making her object of criminal proceedings —conducted before the Senate, not before a judge— in highly exceptional cases ("treason to the nation", "serious common crimes", article 108). If the President is unable to meet her responsibilities out of health or analogous problems, the Constitution sets down a mechanism that requires the calling of a new election only if the absence occurs during the first two years of the term. Otherwise, Congress elects a Substitute President (article 84).

Power dynamics under the PRI projected the image of an all-mighty Presidency, equipped with a panoply of constitutional and meta-constitutional powers.[20] But when the advent of political plurality made legal design relevant, it was soon clear that, viewed from a comparative stance, the Mexican presidency is not particularly strong. The President present bills —something she did massively in the past and continues to do often, but now regularly joined by parliamentary groups and individual Deputies or Senators— and veto the bills approved by the Chamber and the Senate —something she never does. But quite notably in a region characterized by massive traditional resort to this figure, the Mexican President lacks, for instance, the power to legislate by decree.

Against this background, two lines of evolution, of opposing nature, have recently developed. On the one hand, to meet a perceived need to reinforce the President's muscle to push forward policy reforms, she has been given the power to designate, each legislative term, two "preferential bills" that Congress is bound to consider in a short time lapse (article 71). In the same light can be read the formation of a "coalition government," presented by the constitution as "an option" of the President.[21] Under article 89.XVII, "at any moment, [President can] opt for a government in coalition with one or several political parties with representation in the Congress of the Union. The coalition government will be regulated by its covenant and program, to be approved by the majority of attending Senate members. The covenant will establish the causes of dissolution of the coalition government". The Senate must ratify the appointments of most cabinet Secretaries when a coalition government is in place (article 76.II). No doubt the coalition option, created in 2014, echoes the political dynamics favored by the incumbent President, who promoted a pact —the "Pacto por México"— whereby the three main political parties negotiated an agenda of far-reaching reforms in the areas of telecommunications, taxation, energy, antitrust and electoral law —the great bulk of which, of course, were written down in the Constitution. Somehow the idea

[20] Casar 1996, Serrano Migallón 2007.

[21] So it is something more formally structured than the sort of dynamics that has been termed "coalition presidentialism" in the context of Brazilian politics (Abranches 1988, Figueiredo & Limongi 2000, Power 2010).

had been installed that constitutional design, in a political panorama inhabited by three big parties that are jointly determinant but individually not majoritarian, impaired the approval of the "structural reforms" the country so badly needed. Hence the creation of the coalition modality.

In contrast with those provisions, which reinforce the powers of the Presidency, others have limited them, in enlarging the checks the other branches exert over the Executive. Thus, the regulation of exception powers in article 29, after the 2011 reform, gives —or rather confirms— the President the power to issue a Rights Restriction or Suspension Decree in certain situations, but she needs previous Congressional authorization, and the Supreme Court must review those decrees to assure they do not damage the robust list of rights the Constitution now declares non-suspendable. The need to gain the Deputies or the Senate assent extends now to posts that were before of free-appointment, like the Secretary of Finances or the Attorney General (articles 74, 102). The parliamentary chambers can now directly require the presentation of the cabinet Secretaries to explain before them any point they might have concerns about (article 93). And the transformation in independent OCAs of bodies that were previously situated under the Executive umbrella, like the Attorney General, the Federal Economic Competition Commission, the Federal Telecommunications Institute, or the Commission for Social Policy Evaluation, among others, represents a further and very significant reduction of the Presidential sphere of action.

The federal legislative institution is called the Congress of the Union and is composed of two bodies, the Chamber of Deputies and the Senate. The Chamber of Deputies, composed of 500 representatives, is elected by popular vote every three years —with re-election now allowed for up to 12 years— under a system that combines majoritarian and proportional representation. The Senate, formed by 128 members, is elected every six years —like the President, whose election is celebrated the same day— also under a mixed system that combines a majority system for the election of two Senators for each state, plus an additional one for the first minority, and proportional representation for the election of the remaining 32. As far as legislative attributions are concerned, the Mexican Congress operates under a scheme of almost perfectly symmetrical bicameralism, though exceptionally some bills must be filed and first discussed in one of the chambers. Beyond legislation, there are some exceptional tasks the two chambers must do together —like receiving the swearing-in of the President, accepting her resignation or designating a substitute— and then they have a list of separate attributions. The Senate, for instance, shares power with the President in the making of a long list of appointments throughout the state apparatus, and in the domain of foreign policy (article 77). The Chamber of Deputies, on its part, has exclusive attributions in the financial area (article 74), including the approval of the Budget on the basis of the President's exclusive proposal.

In the context of a massively amended Constitution, the regulation of the balance of powers stands out, as Eric Magar has underlined, as a comparatively stable area.[22] His study of developments in the area between 1997 and 2012 —before the last OCAs' creation wave— finds few significant changes. He believes they moderately widen Congressional powers and reinforce

[22] Magar 2014: 260-262.

the Supreme Court over both President and Congress. Among the Legislative-reinforcing moves, he includes the change in the deadline for the President to present the budget and the Public Account, now giving Congress more time to analyze them; the creation of the Superior Federal Audit under the Chamber of Deputies, importantly reinforcing the latter's supervisory powers; and changes in the regulation of Presidential veto to protect legislation from eventual "pocket vetoes." As has been remarked, in 1917 the Legislative Branch had been actually designed to be weak.[23] The constituents had the idea —articulated by Emilio Rabasa in his influential book "The Constitution and Dictatorship"[24]— that one of the reasons why Presidents had resorted so often to exception powers was the strong position of the Legislative in the 1857 Constitution: this would have "forced" them to break the rules. This is why they created a Congress that worked five months a year and designed cumbersome legislative procedures. Congress now works throughout the year and its attributions have increased. But the absence of reelection has maintained their members —particularly the Deputies—in a sort of perpetual state of amateurism that has done little to increase their political clout and ameliorate their severely damaged public image.

One real novelty is the supplementation of traditional representative venues with a few mechanisms of direct or participatory democracy. But Mexico clearly stands out in the region by being very late in introducing them (in 2013), and by regulating them very restrictively. The first mechanism is popular legislative initiative, which requires signatures of the 0.13 % of the nominal election roll (article 71.IV). The second is popular consultation, which can be summoned by Congress at the request of the President, a percentage of representatives, or citizens representing 2% of the nominal election roll. But the proposal goes nowhere is if not supported by a majority in each chamber; consultations are only binding when the turnout amounts to 40% of the nominal election roll; and they cannot touch on a list of issues that include human rights restrictions, article 40's principles, electoral matters, public revenue and expenses, national security and the organization of the Army. The Supreme Court is responsible to check this after the formal calling (article 35 VIII). In the same package of amendments, and with the same idea of reinforcing the political profile of ordinary citizens, the running of independent candidates —running outside the structure of political parties— was allowed (article 35 II, which, by exception in the context of the Mexican Constitution, does not contain any sort of detailed regulation of the mechanism). Other figures associated to participatory democracy in the region —like participatory budget or revocation of mandate— are not included.

As we announced, beyond the classic separation of powers area, in Mexico we must account for the vast amount of constitutional space covered by the OCAs. In other countries, these institutions fall outside the first-tier state apparatus. It is an heterogeneous assortment: some of them have constitutional presence since the 80s and 90s —like the Bank of Mexico (BANXICO), the National Institute of Statistics, Geography and History (INEGI) or the National Human Rights Commission (CNDH)— while up to five of them were added or elevated to that status in 2013 —the Federal Telecommunications Institute (IFETEL), the Federal Economic Competition Commission (COFECE),

[23] Zamora *et al.* 2005.
[24] Rabasa 2006 [1912].

the National Institute for Access to Information (INAI), the National Commission of Social Policy Evaluation (CONEVAL), the National Institute for the Evaluation of Education (INEE), and the Federal Attorney General (FGR). Most of them are extensively regulated in the Constitution, but not all (not the INEGI or Banxico). Special mention must be made to the National Electoral Institute (INE), which operates in combination with a special department within the judicial power —the Electoral Tribunal, with a Superior Chamber in Mexico City and five Regional Chambers. Given the dimension of these large and generously funded electoral institutions, with their replicas at the State level, we can meaningfully signal the existence of a sort of Electoral branch in Mexico, distinctive even in a region singularized by the regular existence of electoral authorities.[25] The INE and its State pairs are not only responsible for organizing reliable elections, but also for supervising the enforcement of a thick body of political party regulations that apply on a permanent basis. These regulations discipline the distribution of public funds, spending practices, and many other aspects about what politicians can do, or even say.[26] The Electoral Tribunal and its State replicas, on their part, certify election results, deal with nullity or irregularity challenges, among other matters, remaining busy at all times.

Developments over these past years evince to what extent the "OCA kit" has been considered in Mexico a sort of unquestioned institutional solution when trying to confer a patina of "impartiality", "efficiency" and "modernity" to the management of complex policy areas. Politicians have clearly assumed this was the sort of move that would give them credit. And while some of these institutions operate in socially charged arenas —education, or criminal investigations—, there has been no significant debate about the specific fact of their adopting the OCA form. But what has been their actual impact on the architecture of state authority? Has the OCAs festival implied loss in judicial control or democratic accountability? As regards judicial review, the Constitution has recently added OCAs to the list of institutions with active and passive standing in conflicts of jurisdiction before the Supreme Court (article 105.1.l) and citizens can file an *amparo* to defend their rights before them. But the constitution creates exceptions and special rules to be carefully accounted for. Article 6 holds, for instance, that the transparency agency (INAI) issues resolutions that are "binding, final and un-appealable" by state authorities, but creates a special channel ("revision") before the Supreme Court they may use if they believe providing the information endangers national security. And article 28 VII holds the rulings of the COFECE and the IFETEL can only be challenged via indirect *amparo* (a sub-modality), to be resolved by newly created Collegiate Courts specialized in anti-trust, broadcasting and telecommunications. More generally, the multiplicity of functions and the variation in the detailed regulation of these more than ten different institutions does little to render transparent their exercises of power and to reinforce the chances of rendering them well supervised and accountable.

[25] Nohlen et al. 2007, Orozco-Henríquez et al. 2010, Issacharoff 2011: 162.

[26] In 2007, an amendment added to article 41.C the provision that political ads were to abstain from "denigrating the institutions or the parties themselves, and from calumniating individuals", pushing electoral authorities to police the content of messages —the policing of "negative advertising"— and engage in a dynamics incompatible with prevalent understandings about freedom of political speech. In 2014, another amendment eliminated the denigration-related clause and left only the libel ban.

2. Territorial distribution of power

Except for the period between 1936 and 1957, Mexico has kept federalism as the model of territorial distribution of power. As has been remarked, territorial issues were highly controversial in the early years of the Republic, when political dynamics advanced under genuine conflict among the interests of central and local oligarchies.[27] The contrast between federalism and centralism —like that between secularism and state-sponsored Catholicism— was a core cleavage around which Mexicans severely divided during the XIX century.

When the Constitution of 1917 was approved, federalism was firmly retained, but the scenario that progressively consolidated and still prevails has, in my view, little to do with the one that had dominated the previous century. As Casar underlines, in the process of state reconstruction that followed the revolution after the instability of the XIX century, federalism was sacrificed and later completely engulfed by the PRI political hegemony,[28] by both informal and formal means —a constitutional clause allowing the Federation to declare the existence of a "disappearance of State powers" was used to remove State Governors 62 times between 1917 and 1975[29]. Today, the territorial model is not particularly controversial: few call for the abolition of federalism but fewer defend it; there is nothing close, in any case, to the debates on territorial matters found in countries with important historical and identity cleavages. The prevailing view among political and intellectual elites is that federalism works badly and poses critical difficulties to fight the country's most troubling problems, like rampant corruption, insecurity, irresponsible management of public finances, collusion with crime, and gross inefficiency in the execution of state programs. Accordingly, almost any constitutional amendment is an additional step towards an even tighter centralization. This has led to an intense deformation of the initial constitutional architecture in the area, and to dysfunctions that impair the smooth juridification of this important dimension of the constitutional system.

The initial regulatory architecture followed a "dual" model with a de-centralizing orientation. Article 124, still in force, confers to the Federation jurisdiction in the areas explicitly listed in the Constitution, remaining the rest in State's hands. This is the foundation of the model. But the areas of attributed federal jurisdiction have ever augmented: article 73 has now 30 sub-sections, including an "implied powers" clause —never resorted to because the Federation benefits from frequent power-conferring amendments— and many other articles name the Federation as being in charge. It is true that many of these provisions take the form of shared or coordinated attributions, in the "cooperative federalism" style that has supplemented or replaced the "dual" logic based on the clean separation of responsibilities. Two sorts of shared attribution schemes stand out in the Mexican constitution: "concurrent" jurisdiction and "coordinated" jurisdiction. Concurrent jurisdiction obtains when the Constitution declares that jurisdiction in a given area will be shared by the Federation, States and Municipalities, according to the distribution to be

[27] Serna de la Garza 2013: 11, 135.
[28] Casar 2010: 89.
[29] Serna de la Garza 2013: 136 (citing González Oropeza 1987: 155-233).

operated in a “Ley general” (General Statute), which is a federal statute. In these areas, therefore, the Constitution delegates in the Federation the task of operating the distribution of power in the way it finds most suitable. Under this scheme we find, among others, health, education, urban zoning, environmental protection, tourism, fishing, and several areas of criminal law. Please note that the meaning of “concurrent jurisdiction” in Mexico is therefore different from its standard meaning in other traditions (e.g. Germany), where it points to areas where States may legislate only right until the Federation decides to do so. In areas of “coordinated” jurisdiction —like public safety, culture or security— coordination is conceived as an exclusive function of the Federation, while the coordinated state levels enjoy a space guaranteed from the Constitution, not by a federal statute. Both techniques illustrate well the heavily centralizing thrust of the Mexican federal arrangement: in concurrent areas, the Federation is the one deciding what to retain and what to confer to states and municipalities; in coordination areas, instead of the latter being worked out together by the authorities involved, the Federation decides how everyone’s joint work will look like, gaining further decision-making space.

A feature that permeates the entire regulation is the fuzziness and the heterogeneity of the terms used to designate areas of jurisdiction. Nowhere else are the non-systematic patterns of constitutional reform, the presence of different regulatory “layers,” and the fingerprint of political “urges” more visible than here. Surely to soothe contortion and indeterminacy problems, the Federation has multiplied the creation of “National Systems”: the National Security System, the National Health System, the National Water System, the National Education System… or the most recent one, the National Anticorruption System. The regulation of the Systems tries to put together the different responsibilities of the several levels enjoying attributions on an area, as well as those of private agents (private schools or hospitals, for instance), trying to attain some systemic harmony by setting forth general goals and functions and by creating the structures and processes to guarantee the implementation of public policy. Traditionally, this regulation was found in statutes —see, for instance, the General Health Statute— but the recently created National Anti-Corruption system is spelled out directly in article 113 of the Constitution.

A few lines must be dedicated to describe the status of Mexico City, which, until 2016, was pretty distinctive. After a number of antecedents, in 1928, a statute declared the city to be a “Federal District” where the laws of the Federation were applied, with a government structure headed by a Chief appointed by the President. Along different reforms in 1987, 1993 and 1997, the city progressively acquired a position similar to the states, with an elected legislative chamber and executive, with two very important differences: it had only the areas of jurisdiction explicitly attributed to it in the Constitution (article 122), the rest remaining in the Federation’s hands, and it could not participate in the amendment of the federal Constitution, since article 135 refers only to the vote of “State” legislatures. At the turn of the century the District acquired a vibrant political profile, with left governments approving legislation in high contrast with that prevailing in the States —in 2007, for instance, it was first in Latin America to legalize first-trimester abortion, and in 2009 same-sex marriage was approved. In January 2016, a constitutional amendment (2,684 words long), end-result of a political process sponsored by the city government, scheduled

the transformation of the city into a full-status State. It renamed the territory "Ciudad de México" and convened a constitutional assembly of hybrid nature —with 60 elected representatives and 40 designated by federal and city authorities among their members. The new constitution was proclaimed February 5, 2017 and —except for specific provisions— will enter into force in September 2018. The main novelties as regards governmental institutions include a palette of participatory mechanisms more generous than the ones we find at the federal level (including the institution of mandate revocation); the transformation of territorial subdivisions into units analogous to standard Municipalities, with an elected body now compensating the powers of the Municipal executive; the creation of a Constitutional Chamber in the Superior Court of Justice; new procedural channels, such as the legislative omission action or a rights-protecting summary action for individual and groups in position of vulnerability. The bill of rights is generous and includes rights that recall the progressive political outlook of the city in the past years, together with a few new ones: the right to be free from structural inequalities and poverty, to euthanasia, to live in any sort of family community, to equalitarian marriage, or to the therapeutic consumption of marihuana, as well as rights derived from the "city rights" paradigm.[30]

Political decentralization reaches out to the municipal level. Before 1999, Municipalities were subordinate pieces within state orders. They could enact only subordinate regulations and their legal system was a subset of the state one. In 1999, an important reform to article 115 declared them autonomous and gave them a range of exclusive jurisdiction, as well as constitutionally guaranteed sources of income —notably the property tax. The Supreme Court has interpretively certified the political independence of Municipalities, their capacity to enact non-subordinate regulations and the indemnity of their sources of revenue.[31] Another major development that operated a qualitative change in the constitutional system occurred in 2000, when a constitutional amendment recognized the territorial autonomy to indigenous communities, after a long political process triggered by the 1994 Zapatista uprising in Chiapas. Though indigenous communities believed the contents of Article 2 fell short of what they had negotiated with the State in the San Andrés Covenants, it is a long article that recognizes self-determination rights, to be developed in State constitutions, including among others, the right to "decide their own internal forms of coexistence and social, economic, political and cultural organization" and to "apply their own normative systems of regulation and resolution of internal conflicts, respecting the general principles of this constitution, individual guarantees, human rights and, relevantly, the dignity and integrity of women" (though state statutes must establish "validation cases and procedures by judges or tribunals"). Article 2 also imposes a generous list of indigenous-rights-related duties upon all government levels when acting within their areas of jurisdiction. It is a quite impressive normative package, though unfortunately one that has remained exceedingly "dormant"; while many communities in several States apply rules of their own to manage elections and internal affairs, only exceptionally have they attempted the transformation of local political structures —

[30] Significant parts of the Constitution have been challenged before the Supreme Court in several *acciones* and *controversias* in March 2017.
[31] See summarized doctrine in Rojas Zamudio 2017: 1886-1891.

the case of Cherán being one among few exceptional experiences.[32] There has been little political action and little judicialization around those constitutional entitlements, most of whose potential is still to be unleashed.

As comparative lawyers know well, two elements are largely determinant of the degree of actual political de-centralization that obtains in a country: the organization of finances and the mechanisms to arbitrate conflicts of jurisdiction. The Mexican constitution is pretty coherent with federalism on the second count: through the channel of the "constitutional controversy" (article 105.II), the Supreme Court decides on territorial conflicts of jurisdiction —upwards and downwards— between the federation, states and municipalities. Indigenous autonomy is less comprehensively guaranteed, since communities are not recognized independent standing. If they happen to constitute an "indigenous municipality" and feel comfortable with that, they can access the Court as any other municipality. But the protection of many of their rights is imperfect, since legal frameworks have not generally made the adjustments necessary to include indigenous actors and rights, beyond the limits of traditional municipal and agrarian law.

Things look very different with regards finances. Leaving aside the explicit reservation of property taxes and other minor sources, as already mentioned, the Constitution does not regulate the matter at all. Under article 124 default rule, jurisdiction falls on the States, so they could have therefore produced the norms necessary to raise the money they need to meet their public responsibilities. Instead, Mexico built a system based in a massive abdication of power: the System of Fiscal Coordination. In the context of the System, States sign a Covenant whereby they renounce their possibilities of raising taxes in favor of the Federation, and the latter acquires the compromise of transferring them money under several modalities. The two main transfer funds are Federal Participations (*participaciones*) and Federal Contributions (*aportaciones*). While participations are non-conditional and based on factors that take into account —but also slightly compensate for differences in— population and wealth, contributions are conditional and packed into dedicated topics (road infrastructure, education, health) that enable the Federation to orientate public policy.[33] The System generally favors great centralization and elite negotiation between the federation and State governors, preventing the development of accountability dynamics at the state level.

3. Constitutional reform

As already suggested in Section 1, the dynamics of constitutional amendment in Mexico is very distinctive and full of systemic consequences. The amendment rate is very high and has risen exponentially from the 1990s onwards, precisely at a time one would have expected a decrease —more political pluralism should have made it harder to obtain the required majorities.[34] Quite the

[32] Bárcena & Guerrero 2012, Aragón 2015.
[33] Serna de la Garza 2009: 185-261, 2013: 145.
[34] Casar & Marván 2014.

contrary, the amendment rate has increased, and during the presidencies of Calderón and Peña Nieto has reached an unprecedented dimension —2/3 of the total number of amendments having been approved during their terms.[35] As more than 700 reforms —at the Constitution's 100th birthday— found their way into the text, its length extraordinarily multiplied: if in January 2010 the constitution had 78,295 words, in February 2017 it has 125,629 words —far more than the Colombian, Ecuadorian or Bolivian texts, championed among the longest in the comparative scene.[36] And, as we described in Section I, it is not only a question of more words, but also one of more detail, more heterogeneity, and less systemic coherence.

The constitution does not contain eternity clauses but the amendment formula, set in article 135, does not seem particularly amiable. It states the Congress of the Union must pass amendments with a vote of 2/3 of attending members, and the majority of state legislatures must ratify them. Congress or its permanent commission —during recesses— will make, it adds, the counting of the state legislatures' votes, and will declare the amendments adopted. The regulation leaves many questions unanswered: Who can file an amendment bill? How exactly it must be discussed in "Congress", which is bi-cameral? Is partial adoption possible? May Congress count State votes before all legislatures have discussed the amendments? In the absence of answers in the constitutional text, the rules and procedures of ordinary statutory-making are applied —and State ratification considered to exist the minute the necessary votes have arrived.

In fact, all in the dynamics of constitutional amendment in Mexico resembles ordinary politics. Amendment requirements are the same whatever the part of the Constitution to be changed, and excite only the action of ordinary political institutions. The Supreme Court has not been given explicit powers of review of constitutional amendments and —surprisingly in a country that lives under hectic change— it has foreclosed review both on procedural and substantive grounds.[37]

Mexico's hyper-reformism provides a fascinating case study in the context of the now bourgeoning literature on constitutional change,[38] and Mexican scholars have conducted a notable amount of research and debate on the topic.[39] These analyses try to uncover its causes, effects, and what could be done about it. The UNAM, for instance, has promoted a re-ordered version of the text that somehow decreases its systemic disorder and sends most code-like provisions to Statutes of

[35] Fix-Fierro 2014.

[36] Following conventional practice in Mexico, I consider "one amendment" the changes made to one article of the constitution at some point in time (even if the changes are many or touch on different matters). The numbers I give include transitory provisions, given the amount of substance they currently contain. In 2010, transitory provisions represented a 28% of the constitution; they now make for a 43% of it. Without them, the Mexican Constitution has 71,189 words.

[37] See CC 82/2001 (no procedural nor substantive review of amendments in constitutional controversies); AAII 168/2007 and 169/2007 (no procedural review of amendments in actions of unconstitutionality); AARR 2996/96 and 1334/98 (procedural regularity reviewable in *amparo*, though no procedural flaws detected in the instant case; AARR 186/2008, 552/2008 (the absence of procedural and substantive flaws in amendments cannot be dismissed on preliminary grounds in *amparo*) and AR 488/2010 (but cannot be ultimately examined).

[38] Elkins, Ginsburg & Melton 2009, Negretto 2012, Albert et al. 2017.

[39] Valadés & Fix Fierro 2015, Velasco 2016, Pou-Giménez & Pozas-Loyo 2016, Casar & Marván 2014.

Constitutional Development (to be created).[40] Though the content of the Constitution is in line with Latin American contemporary texts, the consequences of never-ending reform are huge and —as we have argued elsewhere— troubling for the most; the dynamics of never-ending change obstructs the development of the core legal and political functions of the Constitution, impairing the consolidation of democracy and the rule of law.[41]

IV. Constitutional review: courts and judicialization

Mexico has not been alien to the worldwide tide that has conferred more power and functions to judges. It should be noted more generally that, though far from being hegemonic, law has gained terrain in Mexico over alternative normative systems, something that could hardly have happened without an evolution in the role played by the judiciary, in particular the Supreme Court.[42] But viewed comparatively, judicialization has arrived late and has been more timid than in other Latin American countries. As in other areas of the constitutional system, in the judicial branch we encounter the familiar patterns singularized by gradualism and a mix of past and present. In what follows, I will describe the general structure and functions of the Mexican judiciary, with special mention to the system of judicial review and judicial government, to close with a few remarks about the relations between access to justice, social mobilization, and social and political transformation.

The structure of the Mexican judiciary is in its basic anatomy the one inherited from the 19th century, combining elements of the civil law tradition with an organic structure that in some respects resembles the US one. Being a federal country, Mexico has state judiciaries besides the federal one. Jurisdiction is distributed thematically, as it happens in civil law countries. Civil law (property, torts, contracts), family law, and —in principle— criminal law, are state matters, while commercial and labor law are federal. The development of the 1917 revolutionary program was however responsible for a very distinctive development, since Labor and Administrative Courts —to which Agrarian Courts were added in the 90s— were set within the boundaries of the Executive branch, not the Judiciary.[43] A major trend over the last decades has been the dramatic increase in the reach of federal criminal law. Another one has touched on criminal procedure, where —following a regional trend—, the traditional inquisitorial system has been replaced by an adversarial one. While initially the Constitution directed States to change by themselves the procedural legislation, in 2013 a National Code of Criminal Proceedings was enacted, to finally unify the adversarial transformation. These are all centripetal trends, reinforced by the fact federal

[40] Valadés & Fix Fierro 2015.
[41] Pou-Giménez & Pozas-Loyo 2016.
[42] Pozas-Loyo & Ríos-Figueroa 2016.
[43] The labor courts feature a very distinctive tripartite composition (government, employers and employees representatives). A 2016 amendment has scheduled their insertion and that of administrative courts, in the Judiciary, and re-designing them under more conventional lines.

tribunals have for long operated as general reviewers of State adjudication in deciding *amparos directos* (*amparos* against judicial rulings —state or federal). Federal tribunals are the ultimate interpreters of both state and federal law, and the overall judicial architecture is far more centralized than the one expectable in a federal state.

The Federal judiciary is composed of District Judges, Circuit Courts (Unitary and Collegiate) and a Supreme Court on the top. Federal judges have two different functions: enforcing federal law, and engaging in constitutional review of legislation and other kinds of state action, though over the last decades the system of judicial review has experienced important transformations and offers many channels of review, before different judicial authorities, with different effects. Let's briefly survey the historical development of a system that now superimposes three modalities of constitutional review: semi-centralized, centralized and de-centralized.

In its first constitutions, Mexico established a French-style system of political review. In 1847, however, it turned to an exclusively judicial system based on the writ of *amparo,* which remained as the sole channel of constitutional review up to 1994.[44] The *amparo* is a writ citizens can file to denounce before a federal judge —not any judge: it is a semi-centralized system— that a public authority has violated her constitutional rights. It broadly protects against acts and norms from all authorities: the police, the administration, judges, the legislative branch, etc. It can operate as a habeas corpus, as a way to activate the judicial review of legislation, or as forum where federal judges check whether other judges have adjudicated the conflicts between private parties with due respect for fundamental rights, thus ensuring horizontal enforcement (Drittwirkung)[45]. Rulings against statutes have *inter pars* effects and result in their dis-application in the case at hand. Powerful as it may seem when viewed in its systemic majesty, *amparo* has actually acquired over time a degree of complexity that endangers its core function as a rights-protective institution. At a crucial point in the XIX century, *amparo* started to be used as an everyday channel to guarantee respect for statutory law, actually operating as a sort of third tier of appeal in most cases, and this damaged its performance as guarantee of the efficacy of the constitution. As it acquired ever more functions, it also acquired a degree of procedural complexity that makes it impossible to use it successfully without the aid of a sophisticated and typically expensive lawyer. A constitutional amendment passed a few days before the human rights reform in June 2011, supplemented with an Amparo Statute reform passed in 2013, attempted to increase its rights-protective performance —standing rules were loosened, direct challenge of private actors was narrowly authorized, the treatment of procedural violations changed, and a channel for the Supreme Court to invalidate with general effects statutory provisions after repeated *amparos* was created.[46] The overall procedural simplification is, however, very modest, and it is doubtful it represents an overall "effective channel" under Inter-American standards.

In 1994, two important channels, designed after the Kelsenian model of centralized and abstract review, were added to the Mexican system: the action of unconstitutionality, whereby a selected

[44] See Cossío 2013, for a thorough description of the historical evolution of the system.
[45] On the guarantee of horizontal effect through *amparo,* Mijangos y González 2007.
[46] See in Ferrer MacGregor & Sánchez Gil 2013 the contours of the new regulation.

group of state institutions or authorities may challenge the constitutionality of statutes (and treaties) and obtain their invalidation with general effects, and the constitutional controversy, an institution that in fact existed from the 19th century but had not been used, now refurbished as a channel to arbitrate the conflicts between power branches at the same level of government, and between the different territorial levels. Together with a package of additional reforms oriented to liberate the Supreme Court of some of its many traditional responsibilities, this was an effort to turn an old 19th century institution into a "true", 20th century, Constitutional Court. The 1994 reform also reduced the number of Justices, which are now eleven, divided into two Chambers with five Justices each. The President hosts and participates in Plenary debates and manages the Court's big administrative apparatus. The First Chamber sees criminal and civil cases, and the Second Chamber labor and administrative ones. Other cases are shared by both or seen in the Plenary, which enjoys exclusive jurisdiction over actions of unconstitutionality and most constitutional controversies.

The third component of the judicial review system, diffuse review, came into being in 2011, when the Supreme Court changed the interpretation of article 133 of the Constitution and declared that it allowed all judges in the country to engage in constitutional review. This was done in the *Varios 912/2010,* the ruling where the Court also clarified the general architecture of the bill of rights. According to the *Varios 912*, however, what ordinary judges declare about the constitutional validity of rules and acts lacks precedential value in future cases. Moreover, their powers of diffuse review do not include the possibility of dis-applying higher judges' precedents.[47]

To close our survey, judicial governance and the radical change it underwent in 1994 must be mentioned. Before 1994, it was the Supreme Court who picked up judges and magistrates from the lower judicial ranks. Now, by contrast, and following a common trend in Latin America, associated to the rule-of-law reinforcing agenda that in the 90s emphasized the critical importance of assuring judicial independence, all questions touching on access, management and discipline of the Judiciary are under the responsibility of a Federal Judiciary Council —and analogous bodies at the State level. The Federal Council has seven members: one appointed by the Government, two by the Senate, three by the Supreme Court among judges and magistrates, the last one being the President of the Supreme Court. The Court retains a strong hold over the Council, which does not have powers to formally discipline Justices. And the Council has a strong hold over the lower judiciary, under discipline and adscription rules, which grant judges defense only in exceptional hypothesis, before the Supreme Court.

The Mexican judiciary retains then much of its old, strongly hierarchical style. A strictly regulated system of binding precedents applies —a rarity in a civil law country— and, by design, the Supreme Court concentrates functions that in other countries are shared among several apex bodies.[48] The abandonment of traditional styles of adjudication —formalistic and very deferential with the political branches— has been slow. During the transition years, the Court successfully

[47] See CT 299/2013 (decided in October 2014).

[48] On the Mexican system of precedents, see Magaloni 2011, Alvarado Esquivel 2013. On the centralization of the judiciary design, see Ríos-Figueroa 2010.

took over the role of arbiter among power levels that the President had fulfilled for many decades, but changes in the domain of rights protection came only later, and intensified only when the human rights constitutional reform more openly invited judges to be proactive in the rights domain.[49] Over the past years the Supreme Court has reinforced its public profile and given signs of openness and sensitivity with citizens' concerns. As in Brazil, the Court broadcasts deliberations on TV and the web,[50] and there are important rulings on, among others, sexual and reproductive rights, freedom of speech, gender equality in the family, and due process rights.[51] Unlike some of its regional pairs, however, the Court has not ventured into the domain of structural injunctions or remedies, and the weakness of public interest litigation limits the reach and impact of judicial action. The Court has made some bold moves in the domain of rights, but the profile of the more recent appointees makes it clear to what extent the political establishment is centrally interested in maintaining its action within comfortable limits.

Recent times have witnessed, in short, a clear reinforcement of the judiciary within the Mexican constitutional system. But Mexican judges have released their bonds with the past only slowly, and the Judiciary retains structures and formal and informal practices that curtail —though by no means eradicate— its systemic impact.

V. Constitutional scholarship

The centennial of the Constitution has propitiated the publication of several books that provide insight and useful references to reconstruct the main lines of scholarly analysis on the 1917 text. Thus, Andrews provides a useful review of historiography and bibliography on the Constitution; Cossío & Silva-Herzog collect essays on scholars like Miguel Lanz Duret, Felipe Tena Ramírez, Mario de la Cueva, Ignacio Burgoa, Jorge Carpizo or Antonio Martínez Báez, thus providing a quick map of those that have been considered the most influential commentators of the Constitution; and a book by the INEHR tries to minimally make up for a systematic lacuna —the action and writings of women— shedding light on figures like Hermila Galindo, Elvia Carrillo Puerto, Amalia González Caballero, Guadalupe Urzúa Flores, Cristina Salmorán or Griselda Álvarez;[52] inside or outside the

[49] Sánchez, Magaloni & Magar 2011.
[50] On the Brazilian system of judicial deliberations, see Silva 2013, 567-584 and Mendes 2017. On the Mexican system, see Pou Giménez 2017.
[51] See, for instance, Madrazo & Vela 2011 (sexual and reproductive rights), Quintana Osuna 2017b (state duties of investigation, feminicide), Alterio & Niembro 2017 (gay marriage), Cossío & Orzoco y Villa 2016 (transformations of family law), Pou Giménez 2013, 2014b (freedom of speech). Updated references to the relevant rulings may be found in the commentaries to the Bill of Rights in Cossío et al. 2017.
[52] Andrews 2017, Cossío & Silva Herzog 2017, INEHRM 2017. Another interesting survey, covering more and more recent ground is provided in Ferrer Muñoz 2002. I thank Héctor Fix- Fierro (himself an important constitutional scholar) for guidance and helpful references in this area of the literature.

four corners of the Constitution, their action was crucial to the belated reforms of a document made without women, which deprived them of political rights until 1953.[53]

Among contemporary scholars, the towering figure of Héctor Fix-Zamudio must be mentioned; an early-generation Inter-American judge, Fix was later President of the UNAM Legal Research Institute and favored the methodological passage from an exegetic, state-centered and nationalist style of doing constitutional law to a more substantive, citizen-centered and outward-looking one.[54] His mentorship was important in the development of an important strand of academic work on constitutional procedure —Eduardo Ferrer MacGregor would be a central representative of the area— and in the reinforcement of studies in Mexican institutional history —of the kind best exemplified by the central works of José Ramón Cossío Díaz.

It would be wrong to assume, however, that Mexico enjoys a strong tradition of critical, independent constitutional scholarship. Traditionally, law schools' focus was positive code law and the basics of professional training, which in Mexico include the mastering of the *amparo*'s hundred thousand procedural turns. The federal judiciary publishes excerpts of the rulings (called *tesis*) since the 19th century, but no strong tradition of critical commentary developed around them. Neither research nor legal commentary has been central. The character of constitutional scholarship has been generally influenced by two factors: the proximity of constitutionalists to state power, and the avalanche of reforms that has marked legal dynamics over the past decades. As to the first, though public and private universities enjoy autonomy, they were not able to entirely escape the subtle webs of state cooptation. The UNAM, and more recently private universities like ITAM or ELD, have provided cadres to the government and the judiciary (here in combination with a complex system of patronage),[55] and the growth in state responsibilities in a context marked by the absence of a professionalized bureaucracy favored the outsourcing of legal production to academic institutions. The dynamics of permanent constitutional amendment has damaged, on its part, the depth of academic analysis, keeping the legal community occupied merely with monitoring and hurriedly commenting the ever incoming new regulations —when not actually involved in their crafting. It is not that there is not valuable theoretical production, but Mexico is certainly a country where it would be interesting to track the broad lines of the historical, structural and sociological connections of constitutional scholars as an identifiable professional group, to better understand what is being done and what is not, and eventually compare with salient patterns in other countries.

Over the last decade, however, signs of incipient transformation abounded. The methodology of legal education in elite universities has changed, and last-generation constitutional scholarship is more globalized, slightly less masculine, slightly less elitist, and more inter-disciplinary in character.[56] Legal blogs, social media and the diversification of publication sites make current constitutional analysis more dynamic and de-centralized. But to reach the point where we can

[53] See in Marván 2017 an excellent portray on how and by whom (by which men) the constitution was made.
[54] I borrow here remarks by Pedro Salazar in a round-table we participated together at ITAM in March 2017.
[55] Pozas-Loyo & Ríos-Figueroa 2017.
[56] See in Ríos-Figueroa 2012 a survey of socio-legal research in the country.

affirm there is a strong, critical, independent community of systematic, all-encompassing constitutional analysis and debate, there are still miles to be covered.

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