

THE JUDICIAL STORM

IMPLICATIONS OF MEXICO'S
2024 REFORM

EDITED BY SAÚL LÓPEZ-NORIEGA & JAVIER MARTÍN-REYES

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Foreword

The Aleph and Mexico's Judicial Reform

Roberto Gargarella¹

I. INTRODUCTION AND ACKNOWLEDGMENTS

Above all, I would like to extend my deepest gratitude to Saúl López-Noriega and Javier Martín-Reyes, the editors of the book *The Judicial Storm. Implications of Mexico's 2024 Reform*, for the honor of inviting me to write the foreword for this work. Much of what I know about the Mexican judicial and political system has come from reading the authors included in this compilation. They represent a remarkable selection of the distinguished group of jurists and political scientists who regularly write about the public affairs of their country.

The work I am presenting here deals with the Mexican judicial reform—in my opinion, one of the greatest institutional tragedies of our time—which was passed by the Mexican government in 2024 within a few days. It is, therefore, an urgent and essential book, published at just the right time: as I will explain, we are facing an institutional reform of extraordinary importance that must be examined and critically analyzed immediately. This is necessary, first, because the reform touches on one of the most sensitive aspects of the Mexican constitutional framework, and second, because it does so in

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a manner I consider imprudent, hasty, and controversial. With this reform, the foundation of the separation of powers—perhaps its most essential pillar—is at risk.

As I will explain, the 2024 judicial reform represents a sweeping transformation of the judiciary, but it involves much more. By closely examining the changes implemented—what was done, how it was accomplished, how it was enforced, how it was negotiated, and what strategies were employed to withstand challenges—we gain insight into the entire institutional landscape. This reform allows us to explore all the major issues that affect contemporary constitutional theory. In this sense, if I may use a metaphor, one could say that we are facing an “Aleph,” an entry point into the vast universe of institutional reform with all its dramas, labyrinths, and challenges.

As we know, the Aleph refers to perhaps the most beautiful and moving of all the wonderful short stories by Jorge Luis Borges. The story revolves around a small and highly peculiar sphere—the Aleph—which the narrator discovers in the cellar of his former lover, Beatriz Viterbo. From there, one can see all things, the entire universe.² Similarly, the Mexican judicial reform can also be seen as an Aleph that allows us to see all the significant issues that affect the world of contemporary constitutionalism. And when I say *all*, I mean all the important concerns and pressing issues that preoccupy—indeed obsess—the legal theory of our time.

II. THE ISSUES RAISED BY THE CRISIS OF JUSTICE

I will list and briefly comment on some of the most important issues that the Mexican judicial reform raises and that forces us to confront and critically reflect on them.

1) *The Breakdown of the Traditional Model of the “Separation of Powers”*

First of all, the Mexican judicial reform presents us with an extraordinarily unusual situation in contemporary democratic constitutionalism—a situation

² In the author’s words, the entire “cosmic space was there... Each thing (the mirror’s moon, let’s say) was infinite things, because I clearly saw them from every point in the universe. I saw the teeming sea, I saw dawn and dusk, I saw the multitudes of America, I saw a silvery cobweb at the center of a black pyramid, I saw a broken labyrinth (it was London), I saw endless, immediate eyes scrutinizing me as in a mirror...” Jorge Luis Borges, *El Aleph*, Buenos Aires, Emecé, 1957.

common in authoritarian regimes, but which we do not normally encounter in democratic systems.

I refer to the case where the three branches of government begin to show a similar “coloration” as they come under the control of the same group or political force. The “old” constitutionalism did not even imagine the possibility of such a problem; it lacked the language to examine it and did not address it at all. There were various reasons for this (better and worse, more or less well-founded), including the assumption that societies would always be divided into homogeneous groups with different interests (between rich and poor, minorities and majorities, etc.) and that these divisions would inevitably be reflected in any representative system.

For the constitutionalism we knew, within a system of “checks and balances,” none of the “relevant” social sectors—now institutionally represented—was meant to overpower the opposing sector. In practice, the whole system of checks and balances was designed to prevent what Alexander Hamilton called “mutual oppression.”

Today, the social configuration has changed dramatically. We live in multicultural societies made up of thousands of heterogeneous groups. The traditional representative system has largely “broken down,” as it is structurally incapable of expressing or representing the infinite diversity of existing groups and interests. As a result of this breakdown, the system of “checks and balances,” which no longer reflects the expected “simple” social basis, has also begun to “fail.”

For this reason, we now encounter “pathologies” that could become the new norm in contemporary constitutionalism. Pathologies like the one we see in Mexico, or the one we will see in a possible second Trump administration in the United States: institutional systems in which the three main branches of government are dominated by a single political orientation and in which the traditional system of separation of powers and checks and balances loses its purpose and strength.

2) *The Form and Substance of the Constitutional Reform*

The judicial reform in Mexico also draws our attention to another central theme of contemporary constitutional theory: constitutional reform. In this

context, we encounter different and controversial positions on fundamental issues that Mexico's constitutional changes force us to reflect on.

I think about questions like the following: How should people in today's democratic societies be involved in deciding important changes in their future political organization? Is it justifiable that popular participation is merely "mediated" by the ruling class? And is it possible that the leadership responsible for major constitutional reform is the same leadership that is responsible for "normal" politics, as Bruce Ackerman suggests (and not specifically elected to discuss reform, e.g., through a constitutional convention)?³ Furthermore, can such "mediated" participation, conducted through ordinary political institutions, be justified in present times, characterized by a deep crisis of representation?

Can we justifiably claim that a reform conceived in this way truly reflects "the voice of the people" in a meaningful sense? Can a judicial reform carried out by representatives of "ordinary" politics change the essential foundations of constitutional organization? And does it have the power to carry out such a reform in a way that benefits the (objective) interests of the ruling power, or should such a reform be considered invalid for this reason? Additionally, can a constitutional reform, in this sense, address "any" issue, or should certain aspects of constitutionalism (i.e., "eternity clauses," the system's fundamental principles, its "entrenched clauses") be understood as beyond the reach of the constituted power's authority to control and amend?

3) *The "Democratization" of Justice*

The judicial reform in Mexico was carried out, as so often, in the name of the highest ideals, the most "virtuous," even if this appeal to noble values served, as so often, to disguise changes that were anything but "noble." The insis-tence on the need for a "democratization of justice" forces us to ask some crucial questions.

Should the judiciary, traditionally seen as "independent" from democratic politics, also be "democratized?" And if so, what does it mean to democratize justice? On the first point, I would say that the answer remains uncertain:

³ Bruce Ackerman, *We the People*, Cambridge, Belknap Press, 1991.

many have argued that a power whose essential function is to protect the rules of the democratic system — as John Ely might put it — or which is responsible for upholding “long-term principles,” as Alexander Bickel puts it, should not be institutionally influenced by short-term impulses (i.e., regular elections).⁴ Let me put it this way: The judiciary will predictably abandon its role in preserving the stability of democratic rules, as well as its role in safe-guarding the “great principles” of constitutionalism (non-discrimination, equal respect, etc.) if its members — who are responsible for that preservation — are subject to the same short-term impulses that influence majority political bodies (i.e., seeking re-election, expanding their own power, etc.).

What has been said opens the door to the second issue raised, which has to do with the meaning of the term democracy/democratization. I have the impression that many who advocate the “democratization of justice” (in Mexico, as in my country, Argentina, years ago)⁵ do so on the basis of a narrow, inadequate, and unattractive notion of democracy, where democracy simply means “regular elections.” According to this limited definition, the claim that the judiciary must be democratized merely implies, and in vain, that its members should emerge from a popular election.

Unfortunately, according to this idea of democracy, the democratic citizen’s task ends as soon as she has cast her vote for this or that judge, who from then on and for many years to come can act as she pleases, essentially free from any dialogue with the citizens and freed from any control by the people. A terrible idea of democracy, I might add. For those of us who understand democracy as essentially what happens between elections — debate, conflict, agreements, accountability — to say that the judiciary must be democratized as a synonym for “it must be elected by the people” is, in democratic terms, an insult. In this way, and in the name of democracy, it is ensured that judges can act at will and according to the pressure of the power of the moment, detached from any communication or control by the people, but always in the name of that same people, to whom they are no longer accountable.

⁴ Alexander Bickel, *The Least Dangerous Branch*, Connecticut, Yale University Press, 1962; John Ely, *Democracy and Distrust*, Cambridge, Harvard University Press, 1980.

⁵ BBC Mundo, “Argentina discute un polémico plan de reforma judicial,” *BBC News*, April 24, 2013, https://www.bbc.com/mundo/noticias/2013/04/130424_argentina_reforma_judicial_vs.

For a more robust definition of democracy, such as the one I propose, “democratizing the judiciary” could mean something entirely different, such as radically enhancing citizens’ access to the courts, strengthening the channels of communication and dialogue between judges and ordinary citizens (i.e., through “public hearings” and mandatory consultations with certain groups— i.e., indigenous peoples— when discussing their rights), etc.

4) *Eroded Democracies*

The Mexican judicial reform also serves as a paradigmatic example of what is referred to in the literature as “democratic erosion.” The concept of “democratic erosion,” developed by Tom Ginsburg and Aziz Huq, refers to situations in which the ruling power—typically a powerful president or prime minister—concentrates more authority, often from “within” the system, by “loosening the nuts and bolts” of control mechanisms.⁶

The term “democratic erosion” refers to a situation where democracy is gradually stripped of its essence through measures that transform it into something else, into an oligarchy, a government of the few. This process, in which democracy is gradually dismantled, differs significantly from the patterns that characterized the region decades ago, when democracy disappeared “overnight” or “in one fell swoop,” typically through a military coup. Today, as Guillermo O’Donnell predicted, democracies are dying a “slow death,” not from a coup, but from “a thousand cuts” that bleed them dry.⁷

Judicial reform, if carried out following Mexico’s example, is a current example of the gradual measures by which democracy can and will be “eroded.” It is one of the main methods by which the system of “checks and balances” can be hollowed out from within, making it irrelevant, unable to prevent abuses of power, and unable to “balance” the risks of excesses or abuses by the political branches.

⁶ Tom Ginsburg and Aziz Huq, *How to Save a Constitutional Democracy*, Chicago, The University of Chicago Press, 2018; Steven Levitsky and Daniel Ziblatt, *Tyranny of the Minority*, London, Viking Press, 2023.

⁷ Guillermo O’Donnell, *Disonancias. Críticas democráticas a la democracia*, Buenos Aires, Prometeo, 2007.

5) *Imperial Presidencies and Hyper-Presidents*

At the center of “eroded democracies” often lies a strong executive, which typically serves as the driving force behind such changes and is generally the primary beneficiary of these institutional disruptions.

In Latin America, Carlos Nino coined the term “hyper-presidentialism” to describe the form of presidentialism that has prevailed throughout the region since the 19th century, anticipating the kind of strong presidentialism that only became more visible in the United States after the regulatory changes following the September 11 crisis.⁸ (In the United States, the historian Arthur Schlesinger had already warned of the dangers of an “imperial presidency,” while Bruce Ackerman researched and popularized this idea from a legal perspective).⁹

For Nino, Latin American presidents deserved to be called “hyper-presidents” compared to the presidentialism enshrined in the U.S. Constitution, as many “additional” powers were granted to the region’s executives. These “additional” powers included, in some cases, the power to restrict rights by declaring a “state of siege,” the power to “intervene” in federal or provincial states, the discretion to appoint and dismiss cabinet secretaries at will, and formal and informal powers—acquired legally or extra-legally—that allowed presidents to threaten or “co-opt” other officials, particularly judges (e.g., salary increases, pressure from intelligence agencies, or “rewards” for leaving office, such as ambassadorships, etc.).

A reform like the Mexican judicial reform appears feasible only through the initiative and pressure of a “hyper-presidency” or “imperial presidency.” Unfortunately, as is often the case, the Mexican reform seems primarily aimed at strengthening these “imperial powers” of the Executive.

6) *The Breakdown of Representative Political Institutions*

The process of Mexican judicial reform also highlights another central theme of contemporary constitutionalism: the severe crisis of representative bodies.

⁸ Carlos Nino, “Hyperpresidentialism and Constitutional Reform in Argentina,” in Arend Lijphart and Carlos Waisman (eds.), *Institutional Design in New Democracies*, New York, Westview Press, 1996.

⁹ Bruce Ackerman, *The Decline and Fall of the American Republic*, Cambridge, Harvard University Press, 2010.

Without delving into the details of the approval process of this reform, the crisis becomes evident when we note that such a significant constitutional amendment with extraordinary implications was discussed and approved by the legislative chambers in mere minutes, only to be addressed and ratified later by a majority of state legislatures in moments, as if it were the appointment of maintenance staff in a government building.

The fact is that Mexico was undergoing one of the most profound transformations to the foundational structure of its entire judiciary—both the federal bench and the judicial bodies of the 32 states that make up the Mexican federation. It was a reform that—also in a manner almost unprecedented in the world—led to the majority of the country’s highest judicial officials being removed from office within a few months.

Such changes, which can cause significant uncertainty in the legal framework of any country, were passed in Mexico at lightning speed. Without delving into the details and forms of these changes, which will be discussed in the following chapters, I would like to emphasize once again what constituted the essence of the reform. We are dealing here with institutions representing (supposedly) millions of diverse and heterogeneous individuals and groups, unwilling to express even the slightest criticism or nuance regarding a controversial and radical project emanating from the Executive and essentially geared toward their own benefit. It was as if the political bodies were nothing more than mere “clerks” who obeyed, signed, and gave legal force to everything the executive orders. It was as if the dozens of representatives who raised their hands in unison were a single entity: the Presidency.

The “colonization” by concentrated political and economic power over representative bodies points to a problem that is both Western and global, a problem that authors such as Pierre Rosanvallon have studied well—even if the example of judicial reform in Mexico exaggerates the crisis of representation we are talking about almost to the point of caricature.¹⁰

¹⁰ Pierre Rosanvallon, *El pueblo inalcanzable. Historia de la representación democrática en Francia*, Mexico City, Instituto Mora, 2012.

7) *Models of “Judicial Review”*

Another fundamental problem to which the recent judicial reform in Mexico draws our attention concerns the methods of “judicial review of laws.” In Mexico, the main courts could not set an appropriate limit to the president’s dramatic initiative. This happened despite the fact that their own members were among the most affected—another anomaly compared to the practice for which the traditional system of “checks and balances” seemed well prepared. Given the crucial levels of judicial authority, many of us felt that this was an optimal opportunity for the judiciary to introduce one of the most interesting, democratic, and robust concepts of judicial review.

I am referring to a “proceduralist” approach to judicial review, which requires judges to defer to the majority of (substantive) decisions made by political bodies, that is, to “tie their own hands” in a kind of self-restraint, while at the same time adopting a strongly “activist” or “interventionist” stance when confronted with political decisions affecting the rules of the game—changes traditionally promoted by the dominant political power for its own benefit.

By that kind of standard—defended in the United States since 1938 after the *Carolene Products* case—the Mexican judiciary should have reviewed the reform with the highest degree of suspicion or, if you prefer, a strong presumption of unconstitutionality. This was necessary in order to declare the reform invalid if, as was the case, the necessary examination revealed that it was aimed at directly favoring the same actors who advocated it, while at the same time making the political situation more difficult for those who opposed the dominant group.

Of course, this does not mean that majorities in a democracy cannot push for reforms to the “rules of the game.” Instead, the argument is that such reforms to the fundamental “rules of the game” should be the result of a broad and deep agreement between the ruling party and the opposition; emerge from an extended public debate; and, as much as possible, defer their implementation to the “next game” (i.e., ensuring that the President or Legislature that promotes the changes does not benefit from them during its own term). In any case, the Mexican judicial reform clearly shows the urgent need for transparent and clear legal reflection on the proper forms of judicial review.

With the preceding lines, I simply wanted to draw attention to the enormous richness of the debates to which an initiative of the size, weight, and impact of the Mexican judicial reform compels us. If this judicial reform were not so tragic, it could be considered an ideal practical experiment to reflect critically on all the major issues of contemporary constitutional theory. In the following chapters, many of the most important Mexican social science authors help us understand and critically examine the details of this comprehensive, profound, and highly questionable reform with its remarkable effects. I have only provided an introduction to the Aleph here.

Chapter 1

The 2024 Judicial Reform in Mexico: An Overview

Saúl López-Noriega¹ and Javier Martín-Reyes²

I. INTRODUCTION: FORECASTING THE JUDICIAL STORM³

The constitutional reform of 2024 represents the most significant change to the judiciary in Mexico's history. Its implications are extensive. All federal and state judges will be replaced within less than three years. New judges will be elected through a popular voting process, which is unprecedented globally. Additionally, important mechanisms for protecting rights, such as the amparo lawsuit—Mexico's primary judicial tool for safeguarding constitutional rights—will be notably weakened.

In light of such a significant change, the works presented in this book clearly explain the reform's content, making it accessible to a broad audience that may not be well-acquainted with the Mexican justice system. Additionally, these works offer insights into the potential impact of this constitutional change. We believe that such a complex and radical reform requires careful and thorough analysis.

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³ We thank Luis Mauricio Varas Silva and Gadiel Solorio Alvarez for their support as research assistants.

We know that this reform will unleash a genuine storm within the judicial system. Simultaneously, we recognize that the exact consequences cannot be predicted with certainty. Just like real storms, uncertainty is inherent to their nature. Keeping this in mind, the aim of this book is to provide an initial analysis of the most probable effects of this radical transformation of the Mexican justice system. The ultimate effects will only become clear over time. We therefore hope that this work will serve as a foundation for future research examining how the changes introduced by this constitutional reform will manifest in practice in the medium and long term.

This book brings together the work of a group of specialists in the Mexican judicial system. Based on solid arguments and empirical evidence, these analyses provide a comprehensive overview of the most plausible scenarios that could arise when this storm hits Mexico's complex and diverse social conflicts. In this context, it is essential to emphasize that the impact of the reform is not limited to the popular election of judges. The reform is much broader and more complex, as it reshapes fundamental aspects of both the Federal Judiciary and the state judicial branches. The book examines the major changes in the structure and operation of the courts that extend beyond the election of judges. It also explores what these changes could mean for various stakeholders, from the most vulnerable populations to businesses and investors operating in the country.

In this introductory chapter, we present a general explanation of the origins and content of the 2024 judicial reform. Understanding its scope necessitates knowledge of the context in which it was conceived. Therefore, the subsequent section reviews previous judicial reforms and their implementation. A decisive turning point occurred in 1994, when a reform was enacted to align the Federal Judiciary with the principles of constitutional democracy and overcome the role that the judiciary had played under the authoritarian regime that ruled Mexico for 70 years.

The second part of this chapter focuses on the tensions that emerged during the López Obrador administration (2018-2024) between the executive and legislative branches, on one side, and the judiciary, on the other. Specifically, we examine how the judicial reform bill introduced in 2024 represented the culmination of a six-year term characterized by conflicts between the judiciary and López Obrador's movement.

Finally, we provide a brief overview of the chapters in this book, explaining the reasons for their inclusion and describing their main arguments, contributions, and findings.

II. MEXICO'S TRANSITION TO DEMOCRACY AND THE ROLE OF THE JUDICIARY

The 1994 judicial reform marked a pivotal moment in establishing a modern, independent, and effective judiciary. It was, of course, neither the first nor the last reform in this ongoing process. Prior to 1994, significant changes had already been made that enabled the Supreme Court, for instance, to concentrate on the most critical cases.⁴ After this year, important changes were implemented, including reforms that expanded the protection of human rights and broadened the scope of the amparo lawsuit (the primary mechanism for safeguarding these rights).

The 1994 judicial reform was an ambitious institutional project with two central objectives. The first was to create a more professional judiciary and to overcome the patrimonial control with which the members of the Supreme Court administered the judiciary, especially in the appointment of lower courts (federal district judges and federal circuit courts). To achieve this, a judicial council was created—the Federal Judicial Council (*Consejo de la Judicatura Federal*, CJF)—which was responsible for the administration, supervision and discipline of the lower courts and introduced a judicial career based on merit and professional criteria rather than the informal system of favors and recommendations that had dominated for decades.⁵

The second objective was to strengthen the Supreme Court's powers of judicial review. To achieve this, the reform introduced a new mechanism: the constitutional challenge (*acciones de inconstitucionalidad*), an abstract review mechanism based on the procedures of some European constitutional

⁴ Héctor Fix-Zamudio and José Ramón Cossío, *El Poder Judicial en el ordenamiento mexicano*, Mexico, FCE, 1996.

⁵ Andrea Pozas-Loyo and Julio Ríos-Figueroa, "Anatomy of an Informal Institution: The 'Gentlemen's Pact' and Judicial Selection in Mexico, 1917–1994," *International Political Science Review*, vol. 39, no. 5, 2018, pp. 647-661.

courts, which allow for the complete invalidation of a law or statute.⁶ In addition, the constitutional controversies (*controversias constitucionales*) were redesigned and enhanced with the reform. These controversies enable the Court to rule on conflicts between different branches of government.

The subsequent three decades (1994-2024) were marked by remarkable dynamism and an increasingly significant role of the Federal Judiciary. This was not only due to the fact that the implementation of the 1994 reform required substantial and challenging measures from the Federal Judiciary but also because this new institutional framework enabled the various judicial bodies, particularly the Supreme Court, to take on a more active role in Mexico's constitutional democracy: serving as an arbiter of conflicts among the branches of government and as an effective protector of constitutional rights. The progress achieved during this period is undeniable.

In the judicial realm, federal courts, particularly the Supreme Court, have started to move away from formalistic arguments focused on procedural aspects and begun to protect a wider array of rights, from the most traditional to contemporary rights, using more reasoned and innovative arguments. This shift was also influenced by various political and social actors who brought increasingly complex and sophisticated cases to the federal courts.

A critical shortcoming, however, was that the decisions of the courts did not always have a direct impact on the majority of the population. This was due to a combination of factors. First, the courts were reluctant to establish clear and binding precedents that would ensure effective protection of several important rights, particularly in the area of economic and social rights, which are central in a country characterized by poverty and inequality. Second, despite the 1994 reform, legal limitations continued to exist that restricted the scope of judicial decisions, such as the fact that the Supreme Court's precedents was binding on the courts but not on the administrative authorities. Third, it is crucial to point out the failures of other branches of government and the judiciary itself, such as the lack of effective implementation of these rulings through public policies. Finally, it should be emphasized that, in

⁶ The term constitutional challenge is used here for its familiarity in English-speaking contexts. See, for example, Víctor Ferreres Comella, *Constitutional Courts and Democratic Values: A European Perspective*, New Haven & London, Yale University Press, 2009.

general, state judiciaries—where the majority of cases affecting people’s daily lives are decided⁷—have consistently suffered from significant design flaws and chronic underinvestment. These and other factors weakened the legitimacy of the Federal Judiciary and made it vulnerable to the rise of Lopez Obrador’s populist movement.

The judicial career also made considerable progress since the 1994 reform. During these years, generations of judges were selected, trained, and assessed based on professional criteria, aiming to establish a genuine civil service career and largely eliminate the old clientelist practices. The progress was undeniable: significant portions of the judiciary consisted of lawyers who had established their careers through merit and hard work, without dependence on political influence or personal connections. Consequently, Mexico built a more autonomous and professional Federal Judiciary.

However, the shortcomings and limitations of the 1994 reform are undeniable. While increasing political fragmentation, the transition to democracy, and the existence of divided governments allowed the federal courts to make decisions that impacted the interests of major political parties and governments,⁸ the Federal Judiciary hesitated in many cases. It fell short in several decisions that could have strengthened the democratic transition in terms of checks and balances and human rights. Although the judiciary encountered these favorable conditions, between 1997 and 2018, the most significant rulings from this period reveal a clear trend: in the majority of important cases at the federal level, it continued to favor the ruling political party.

In other words, the Federal Judiciary made considerable progress in protecting rights and balancing powers, especially when we compare its functioning to that before the 1994 reform. However, it was not without some caution—occasionally excessive—regarding the overstepping of certain boundaries or the setting of precedents that could lead to unpleasant conflicts with public and private powers.⁹

⁷ Javier Martín Reyes, *Reforma en materia de justicia cotidiana*, Mexico, Fondo de Cultura Económica, 2020.

⁸ Julio Ríos-Figueroa, “Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994–2002,” *Latin American Politics and Society*, vol. 49, no. 1, 2007, pp. 31-57; and Javier Martín Reyes, “El Tribunal de los Militantes: el control judicial de los conflictos intrapartidistas en México,” *América Latina Hoy: Revista de Ciencias Sociales*, no. 62, 2012, pp. 131-153.

⁹ See e.g.: Andrea Castagnola and Saúl López Noriega, “Are Mexican Justices True Arbiters Among Political Elites? An Empirical Analysis of the Court’s Rulings from 2000-2011,” and “The Supreme Court and the (no)

In the area of administration, despite some improvements, influence peddling, nepotism, and corruption were not completely eradicated. Indeed, the judiciary changed considerably with the introduction of a judicial career system, moving from a model dominated by patronage networks to a more professionalized structure. However, these practices persisted, albeit to a lesser extent than in the past, at various levels—from the lower courts to the Supreme Court itself.¹⁰

In sum, in assessing the performance of the Supreme Court during this period, we must recognize both its significant successes and its remarkable missed opportunities. It could have done much more during these years. The political and institutional conditions were in place for it to exercise its power of judicial review with greater determination, mainly to protect the most vulnerable groups and in a context where society increasingly turned to it for relief. In addition, its administrative autonomy provided the opportunity to fight corruption and nepotism more vigorously, strengthen the rule of law, and consolidate its legitimacy in the eyes of the public.

III. PRESIDENT LÓPEZ OBRADOR: THE POPULIST ASSAULT ON THE JUDICIARY

Andrés Manuel López Obrador's victory in the 2018 presidential elections in Mexico was a historic event. It not only signified the emergence of the country's first left-wing government in the democratic era but also the ascendance of a political force that vowed to transform the Mexican state. His triumph was supported by substantial electoral legitimacy. He received 53 % of the vote, and his Morena party, along with its allies, secured an absolute majority (over 50 %) in both the House of Representatives and the Senate. This established his government as the first unified government in Mexico's democratic history, wielding an unprecedented level of legislative control.

López Obrador's government was characterized by constant contradictions. On the one hand, he asserted that his administration would not merely

Rights Revolution. An Empirical Analysis of the Court's Rulings from 2000-2011," both in *Judicial Politics in Mexico. The Supreme Court and the Transition to Democracy*, Andrea Castagnola and Saúl López Noriega (eds.), Routledge, New York, 2017, pp. 68-94 and 95-116, respectively.

¹⁰ Julio Ríos Figueroa, *El déficit meritocrático: nepotismo y redes familiares en el Poder Judicial de la Federación*, Mexico, MCCI, 2018.

be another government within Mexico's democratic system but rather a radical transformation of the political regime. He likened his ascent to power to the three significant transformations in Mexico's official history: Independence, the Reform era, and the Revolution. From this idea emerged the concept of the "Fourth Transformation," a term coined by López Obrador himself to articulate his administration's ambitions. On the other hand, unlike these three prior transformations, López Obrador did not see a new Constitution as necessary. From the beginning of his term of office, he made it clear that he would prioritize administrative decisions and changes to secondary legislation over far-reaching constitutional amendments.¹¹

This does not mean that no constitutional amendments were passed in the first half of López Obrador's term of office.¹² These reforms took place, and in fact, they were all at least partially supported by the opposition, as Morena and its allies did not possess the qualified majority (two-thirds) needed to amend the Constitution. Nevertheless, two important points should be emphasized. Firstly, the reforms that were advanced in the early years of the López Obrador government did not alter the fundamental structure of the Mexican constitutional system. Secondly, López Obrador faced setbacks in both the legislative and judicial branches in his attempt to implement his agenda and gradually came to realize that his project would require far-reaching constitutional changes to be truly consolidated.

The reforms promoted in three key areas reflect the tension between López Obrador's administration and the system of checks and balances. After the 2021 midterm elections, in which the entire House of Representatives was renewed, Morena and its allies once again secured an absolute majority (more than 50%). Still, they fell short of the supermajority (two-thirds) needed to amend the Constitution. Despite this restriction, the president announced his intention to push ahead with three significant reforms: electoral reform aimed at limiting the conditions for political competition (referred to as Plan

¹¹ Sergio López Ayllón, Saúl López Noriega, and Javier Martín Reyes, "Todo por la razón y el derecho (hasta que estorben). La tensión entre Constitución, reformas y gobierno," in Ricardo Becerra and José Woldenberg (eds.), *Balance temprano. Desde la izquierda democrática*, Mexico, Grano de Sal, 2020, pp. 73-91.

¹² Sergio López Ayllón and Javier Martín Reyes, "No me vengan con que la ley es la ley: el Estado de derecho en tiempos del populismo obradorista," in Ricardo Becerra (ed.), *El daño está hecho. Balance y políticas para la reconstrucción*, Mexico, Grano de Sal, 2023, pp. 49-72.

A); security reform focused on transferring control of the National Guard — Mexico’s federal police force—to the military; and energy reform designed to strengthen the state-owned company, the Federal Electricity Commission (*Comisión Federal de Electricidad*), against its competitors.

All three proposals failed in Congress because López Obrador and his allies were unable to secure opposition support to pass any of them. In response, the government sought to amend secondary legislation in each of these three areas. However, these legislative efforts faltered in the judicial arena. In other words, the federal courts upheld their role in the constitutional system of checks and balances.

The Supreme Court struck down the entire reform of the secondary electoral law (Plan B) due to procedural irregularities in the legislative process.¹³ The law that transferred control of the National Guard to the Department of Defense was declared invalid in its most important aspects due to blatant contradictions with the text of the Mexican Constitution. The amendments to the Electricity Industry Act, which violated the constitutional principle of free market competition and the human right to a clean environment, were also blocked by the Court through amparo rulings. These decisions sparked significant political tension; however, from a legal standpoint, the Supreme Court was merely enforcing provisions clearly enshrined in the Mexican Constitution or well-established precedents.¹⁴

These judicial setbacks explain why President López Obrador later introduced Plan C, a strategy featuring two key components: one legal and the other electoral. On February 5, 2024—just a few months before the presidential elections—he presented an ambitious package of twenty reforms, nearly all at the constitutional level, which collectively represented a reconfiguration of the Mexican state.¹⁵ He also made it clear that his goal was for Morena, his party, and its legislative allies to win the 2024 elections and, this time,

¹³ Javier Martín Reyes, “La muerte judicial del ‘Plan B’: certeza inmediata y riesgos futuros,” *Estudios Sociológicos de El Colegio de México*, vol. 42, 2024, pp. 1-18.

¹⁴ Javier Martín-Reyes and Andrea Pozas-Loyo, “How to Capture the Process of Judicial Polarization in Contexts of Democratic Decline: The Mexican Supreme Court’s Doctrine on Irregularities in the Legislative Process,” *International Journal of Constitutional Law*, 2025, <https://doi.org/10.1093/icon/moae074>.

¹⁵ For an overview of the twenty bills presented by president López Obrador, see: Sergio López Ayllón et al. (eds.), *Análisis técnico de las 20 iniciativas de reformas constitucionales y legales presentadas por el presidente de la República (febrero 5, 2024)*, Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024.

achieve a qualified majority in Congress to ensure the approval of those constitutional reforms.

The scope of this chapter does not allow for a detailed explanation of the complex interplay of factors—including election outcomes, judicial rulings, and political maneuvering—that enabled Morena and its allies to secure a qualified majority in both houses of Congress. Suffice it to say that, by the time this book was completed, nearly all of the Plan C reforms had been enacted within the first months of President Claudia Sheinbaum’s administration, the successor to López Obrador.¹⁶ Among them, the judicial reform stands out, and its content is summarized below.

IV. THE 2024 JUDICIAL REFORM: RHETORIC VS. REALITY

President López Obrador defended his proposal for judicial reform based on the premise of “democratizing” the judiciary. To that end, he took advantage of the widespread belief in judicial ineffectiveness amid Mexico’s security and justice crisis. This was a smart approach, given that his own administration bore some responsibility for the crisis. According to the constitutional framework, addressing the issue was the responsibility of several entities, including prosecutors’ offices, police forces, and intelligence agencies, none of which were part of the reform.

Moreover, he also took advantage of the real shortcomings that have characterized the judicial system over the last thirty years. But instead of proposing a comprehensive reform, López Obrador managed to spread the idea that the only solution was a complete cleansing of the judiciary and the introduction of the only mechanism that, according to his rhetoric, would confer democratic legitimacy: the popular election of judges. According to this logic, the mere renewal of its members through a popular vote would eradicate corruption and finally guarantee justice in the country.

¹⁶ Only the approval of the electoral reform remains pending. For an overview of its content, see: Javier Martín Reyes and María Marván Laborde (eds.), *La iniciativa presidencial de reforma electoral: Análisis técnico del Plan C electoral*, Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024.

Analyzing key elements of this reform is essential. Firstly, it establishes an electoral system for nearly all judicial roles at both the federal and local levels. However, this process of “democratization” is preceded by a significant overhaul of the judiciary: from 2025 to 2027, every current federal and state judge will be dismissed, encompassing everyone from Supreme Court justices to judges in the lowest tiers of state courts.

The election system grants considerable control to Morena and its allies regarding judge selection. Unlike other systems, candidate nominations are not open or based on merit; they rely on approval from evaluation committees appointed by all three branches of government: one by the Executive (currently under Morena), another by the Legislature (also under Morena), and a third by the Judiciary. These committees possess significant discretion in determining who can or cannot compete for judicial posts.

The requirements established in the Constitution and the law for access to judicial positions are minimal, or frankly, absurd. For instance, the constitutional text mandates a grade point average of 8.0 (out of 10) in undergraduate or graduate studies, five letters of recommendation, and a three-page essay. Yet, there is no thorough evaluation of knowledge or experience in the administration of justice. In the first selection under this provision in 2024, none of the committees implemented, or were able to implement, a criterion as basic as a knowledge test.

The judicial reform implemented alterations designed to undermine and exert political influence over the judiciary. A notable change is eliminating the judicial career progression; higher-level roles like district and circuit judges will no longer be dependent on technical assessments or included in the professional service. Ironically, this creates a structural inconsistency: while the criteria for lower-ranking roles, such as clerkships, will still rely on technical skills, district and circuit judges will be appointed without any pertinent evaluations.

The reform introduces a new judicial disciplinary system, led by a Court of Judicial Discipline (*Tribunal de Disciplina Judicial*) with extensive powers and limited oversight. Similar to other judicial officials, its members will be chosen through a combination of nominations from evaluation committees and popular votes. Consequently, the entity responsible for supervising

judges and magistrates was designed with insufficient accountability measures and will likely operate under political and partisan influences.

Finally, the reform also included provisions that weakened several key tools for judicial review. Most notably, it prohibits federal courts from issuing general injunctions—orders that temporarily halt the application of laws for all affected parties—and limits the ability of amparo rulings to have broader, general effects. These changes significantly reduce the judiciary’s capacity to protect fundamental rights and maintain constitutional checks and balances. The reform also eliminated the chambers (*salas*) of the Mexican Supreme Court—panels that traditionally handled most cases more efficiently than the full bench (*Pleno*)—which now risks further slowing down a judicial system already burdened by serious efficiency problems.

V. THE PERFECT JUDICIAL STORM

The book contains twelve more essays, along with this chapter, collectively providing a thorough and detailed examination of the key elements of the Obrador-Sheinbaum judicial reform and its potential impacts once fully enacted. The consensus from these essays is unmistakable: the judiciary is confronting a perfect storm.

In Chapter 2 (*Are Judicial Elections in the United States Comparable to the Popular Vote Established by the Mexican Judicial Reform?*), Francisca Pou Giménez explains the confusion about the judicial election model in various U.S. states and its comparison to Mexico’s newly adopted judicial electoral system. She illustrates that the disparities are significant and stresses the need to point out their incompatibilities to prevent misleading or deceptive comparisons.

In Chapter 3 (*Judicial Elections in Mexico: The Risk of Capture*), Guadalupe Salmorán-Villar highlights a key aspect of the Mexican system of judicial popular elections: the substantial role and influence of political entities during the entire process. This situation leads to a heightened focus on political allegiance rather than technical qualifications in the selection and appointment of judges, potentially undermining the judiciary’s neutrality and independence.

In Chapter 4 (*The Key to the Judicial Branch Election: The Allocation of Positions by Districts*), Alonso Zepeda Celis tackles an important issue: conflating

electoral districts with judicial districts, even though they follow distinct principles. Electoral districts are based on population, while judicial districts are defined by the subject matter of disputes in a specific area. The central issue is the erosion of citizens' voting power—either their votes lack equivalent weight, or they cannot elect all the judges who will influence their lives.

In Chapter 5 (*The Judicial Career after Obrador-Sheinbaum's Reform*), Andrea Pozas Loyo and Julio Ríos Figueroa explore the effects of abolishing the judicial career path. Their findings are notably discouraging: the dismantling of the judicial career undermines the establishment of a professional cadre of judges who possess a strong understanding of the law and legal precedents while failing to create suitable incentives to attract individuals to careers in justice institutions.

In Chapter 6 (*The Other Side of the Reform: The New Discipline and the Same Administration of the Federal Judiciary*), Alfonso Oñate Laborde explores a crucial change brought about by the judicial reform: the replacement of the Federal Judiciary Council with the Court of Judicial Discipline and the Judicial Administration Body. These new institutions have stirred controversy due to their significant power, the lack of legal recourse against their decisions, and—particularly concerning the Court of Judicial Discipline—the fact that their members are elected by popular vote, raising concerns about the potential for political capture.

One key issue that has been largely overlooked is the role of substitute judges: What procedures are in place if a judge is permanently absent? Is there a need for a new electoral process? In Chapter 7 (*The Replacement of Elected Judges*), Sergio López Ayllón offers thorough responses to these seemingly minor questions, which are actually critical to fulfilling a promise of judicial reform: ensuring that the popular vote for judicial appointments is genuine and that it is effectively regulated in situations of voluntary or involuntary absences.

The following three chapters offer a well-rounded view of how judicial reform affects the jurisdictional arena. In Chapter 8 (*The End of General Effects in Mexico's Constitutional Justice*), José María Lujambio clearly explains the implications of eliminating the possibility for courts to issue general injunctions—temporary orders that halt the application of challenged

laws or government acts not just for the claimant, but for society at large. He also analyzes the consequences of restricting amparo rulings (Mexico's primary constitutional relief mechanism) from having general effects, meaning that their legal impact is confined to individual claimants, even when the underlying norm is found to be unconstitutional. Chapter 9 (*Constitutional Justice Adrift: The Elimination of the Chambers of the Supreme Court*), by José Omar Hernández Salgado and Mariana Velasco Rivera, presents empirical data illustrating the chaotic consequences stemming from the dissolution of the Supreme Court's chambers (*salas*). This change compels the Court to handle the thousands of cases it encounters annually through a singular entity: the full bench (*Pleno*). In Chapter 10 (*Case Law and the System of Precedents: Scenarios Following Judicial Reform*), María Amparo Hernández Chong Cuy adeptly articulates, with a pedagogical approach, the impact of judicial reform on the precedent framework and the associated risk of political influence over judicial rulings by the Supreme Court.

In Chapter 11 (*The Other Judicial Reform: What's Happening in Mexico's States*), Javier Martín-Reyes and Saúl López-Noriega explore a judicial reform element that has largely been overlooked in public discussions: the state judiciaries. This aspect is so crucial that it can be considered a distinct reform in its own right. The chapter examines the effects of this reform at the most critical level of justice regarding social conflict and its implications for the daily lives of the country's citizens.

Chapter 12 (*Faceless Judges*), by Rodrigo Brito Melgarejo, explores this figure as both a public policy reflecting the shortcomings of recent Latin American experiences and through the critical lens of the Inter-American Human Rights System. Chapter 13 (*Beyond the Judicial Election: The New Mexican State*) by Daniel Quintanilla Castro concludes the book, linking judicial reform with other institutional changes driven by the current populist government in Mexico, including preventive detention and militarization, which are part of Plan C. As we've argued elsewhere, these reforms are collectively giving rise to a new Mexican state—one that is more authoritarian, more autocratic, more militarized, and more punitive.¹⁷

¹⁷ Saúl López Noriega and Javier Martín Reyes, "En el umbral de la autocracia," *Nexos*, Mexico, November 2024.

Capítulo 2

Are Judicial Elections in the United States Comparable to the Popular Vote Established by the Mexican Judicial Reform?

Francisca Pou Giménez¹

When the 2024 Mexican judicial reform was approaching its final approval, its political promoters portrayed it as an unprecedented move which would put Mexico at the forefront of institutional innovation worldwide.² But references to comparative experiences had a significant presence in the previous months. Abundant reference was made to Bolivia—a country where only the three highest courts are elected by popular vote, and where this selection mechanism has led to massive annulment of votes, citizen apathy,

¹ Senior researcher at the Institute for Legal Research of the National Autonomous University of Mexico (UNAM). A different and shorter version of this text was published on the blog *El Juego de la Suprema Corte* on September 9, 2024.

² Epigmenio Ibarra, "La reforma al poder judicial: un ejemplo a seguir," *Milenio*, October 16, 2024, <https://www.milenio.com/opinion/epigmenio-ibarra/itinerarios/la-reforma-al-poder-judicial-un-ejemplo-a-seguir>; Stephanie León, "Sheinbaum afirma que México es 'el país más democrático sobre la faz de la tierra' al cierre de 2024," *Vanguardia*, December 15, 2024, <https://vanguardia.com.mx/noticias/mexico/sheinbaum-afirma-que-mexico-es-el-pais-mas-democratico-sobre-la-faz-de-la-tierra-al-cierre-de-2024-JC14521459>.

and delegitimization of the judiciary.³ Repeated mention was also made to local courts in the United States.

In August 2024, for instance, the then President-elect Claudia Sheinbaum and prominent members of her future administration expressed surprise at the criticism directed by the United States government towards the judicial reform, particularly the popular election of judges, in view of the fact there are also elected judges in the United States.⁴ The current Secretaries of Economy and Foreign Affairs saw in the remarks of then-Ambassador Ken Salazar “a double standard: What is a virtue in the United States is vice in Mexico,” since “in the United States, many states elected members of the judiciary. Americans seem to consider this practice reliable, and Mexico has never suggested that U.S. democracy is in peril because of this.”⁵

Regardless of the grounds we could raise to consider U.S. democracy ultimately healthy or endangered, I think the “double standard” argument is hasty and overlooks important differences in the legal systems of the two countries. Following President Sheinbaum’s statements, some of these differences were highlighted.

Javier Garza Ramos pointed out, for instance, that in the U.S. states that have adopted some form of popular vote system, there is no uniform regulation of voting methods, which gives them the flexibility to diversify the design of the process—a flexibility that the uniform Mexican system does not offer. Another difference is that this system does not apply to the federal judiciary and, in some states, does not even extend to the higher levels of the local judiciary. Finally, and crucially, the election of judges by popular vote operates in tandem with a prosecutor’s office with the resources and

³ Eduardo Rodríguez Veltzé, “El fracaso de las elecciones por voto popular en Bolivia: de la teoría a la práctica,” *Hechos y Derechos*, vol. 15, no. 82, July-August 2024; Luis Eliud Tapia, “Bolivia y la elección popular en sus altas cortes: tres procesos fallidos,” *El Juego de la Suprema Corte*, January 22, 2024, <https://eljuegodelacorte.nexos.com.mx/bolivia-y-la-eleccion-popular-en-sus-altas-cortes-tres-procesos-fallidos/>.

⁴ Claudia Sheinbaum, “Información muy relevante: en 43 de los 50 estados de los Estados Unidos de América se eligen los jueces por voto popular,” X, August 22, 2024, <https://x.com/Claudiashain/status/1826814125684535653>. (“Very relevant information: in 43 of the 50 states in the United States of America judges are elected by popular vote.”)

⁵ Marcelo Ebrard and Juan Ramón de la Fuente, “The U.S. hasn’t standing to criticize Mexico’s judicial reform,” *The Washington Post*, September 5, 2024, <https://www.washingtonpost.com/opinions/2024/09/05/mexico-elected-judges-supreme-court-garland/> [in response to WP editorial of August 26, 2024]. A Spanish version is available in *La Jornada*, September 5, 2024, <https://www.jornada.com.mx/noticia/2024/09/05/politica/sin-derecho-a-criticar-reforma-ebard-y-de-la-fuente-a-the-washington-post-4664>.

incentives to be effective. It is this combination, Garza remarks, that makes the system as a whole work better—in contrast to the judicial reform in Mexico, which does not touch the prosecutors’ offices, responsible for so many of the serious systemic failures that plague our justice system.⁶

In this chapter, I wish to point out three additional disanalogies that look decisive. The election of state judges by popular vote in the U.S. does not pose risks for democracy and the rule of law comparable to those generated in Mexico by the popular election of the entire judiciary,⁷ based on a system of lists proposed by the three branches of government, for at least the following three reasons.

I. MISMATCH BETWEEN SELECTION METHOD AND FUNCTION: THE PROBLEM OF MASSIVE LISTS

In the U.S. states that have adopted the system, local judges are elected by popular suffrage but not from a list-based system like the one established in Mexico. Instead, they are chosen from a small group of individual candidacies. In each district, typically two candidates compete for each judicial position, and the process orients itself to discern the individual merits of each candidate.⁸

By contrast, under the system set up in Articles 95-97 of the Mexican Constitution following the reform, judges must be elected under the same system applied to members of Congress: from ballots listing an immense number of names. The Constitution sets only minimum requirements to be eligible: an average point of 8 over 10 in a law degree or postgraduate law program, or 9 in the relevant subject area for specialized judicial positions; a three-page essay; five letters from neighbors, colleagues or others attesting to

⁶ Javier Garza Ramos, “Lo que Sheinbaum calló sobre los jueces de Estados Unidos,” *El País*, October 24, 2024, <https://elpais.com/mexico/opinion/2024-08-24/lo-que-sheinbaum-callo-sobre-los-jueces-de-estados-unidos.html>.

⁷ Only the members of the administrative, agrarian and military courts were “saved” from the reform (those organically inscribed already within the sphere of the Executive branch).

⁸ See, generally, Ballotpedia, “Judicial selection in the states,” https://ballotpedia.org/Pennsylvania_intermediate_appellate_court_elections,_2023. Usually there are only two judicial candidacies per vacancy or even, when someone is running for office retention, only one. In states with a partisan system of nomination, political parties hold a primary to determine who will be their single judicial candidate. See, by way of example, the candidates and winners in the 2023 judicial election for intermediate appellate courts in Pennsylvania, in Ballotpedia, “Pennsylvania intermediate appellate court elections, 2023,” https://ballotpedia.org/Pennsylvania_intermediate_appellate_court_elections,_2023.

the candidates' suitability; and, only in the case of circuit magistrates and the members of the apex courts (but not district judges), prior legal experience of three and five years, respectively.

Article 96 of the Constitution provides that the Executive, the Legislature, and the Supreme Court—which have the final authority to select the names to be placed on the ballot—shall each form a selection committee composed of five persons appointed at their discretion and without monetary compensation. The members of these committees have the task of checking that the minimum requirements are met and drawing up a ranking list of candidates on the basis of merit. If this list contains more candidates than each branch can put forward for election (three for members, each of the vacancies in the Supreme Court, and two for other judicial positions), it must be reduced by a lottery system.

Given the number of positions to be elected in each judicial circuit during the June 2025 process (881 posts, not counting local judicial positions that might be also elected on the same date after the reform of local constitutions, and excluding the other half of federal judiciary, to be replaced in 2027),⁹ voters will receive at least six ballots filled with an immense number of names. Listed, numbered, written in tiny print across two columns divided by gender for parity purposes, preceded by a small abbreviation indicating the power branch that sponsors them. The day of the election, citizens will write down in a few blank boxes the number corresponding to their chosen candidates.¹⁰

The information available on the candidates will be uneven, if not null. They must campaign for three months but cannot receive public or private funding. The Constitution guarantees them airtime on public television and radio. Still, the National Electoral Institute stated that this presence will unfortunately not include individual information (there would be only fleeting

⁹ See the relevant information on the website of the National Electoral Institute, “Proceso Electoral Extraordinario para la elección de diversos cargos del Poder Judicial de la Federación 2024-2025,” <https://ine.mx/eleccion-del-poder-judicial-de-la-federacion-2025/> (“Extraordinary Electoral Process for the election of various positions in the Judicial Branch of the Federation 2024-2025.”)

¹⁰ On the preliminary ballot prototype presented by the National Electoral Institute, Animal Político, “Comisión del INE aprueba diseño de boleta para elección judicial; serán de colores y de dos tamaños,” *Animal Político*, December 26, 2024, <https://animalpolitico.com/politica/ine-diseno-boleta-eleccion-judicial>. The National Electoral Institute has planned to print some 600 million ballots (an average of 8 million ballots per day, starting February 12, 2025, the day it receives the final lists of candidates from the Senate, until June 1). For an early warning on the unmanageability and massiveness of the election, see José Ramón Cossío, “Los números electorales de la reforma judicial,” *El País*, July 16, 2024, <https://elpais.com/mexico/opinion/2024-07-17/los-numeros-electorales-de-la-reforma-judicial.html>.

seconds for each candidate if time distribution were attempted) and that official times will be used for generic promotions about each type of position.¹¹

This system is problematic. Unlike legislators, who are part of collective bodies in which the influence of each specific representative is very low, judges decide individually on the recognition or denial of rights that are extremely important for people. Their selection must always be made on an individual basis, whether based on technical mechanisms, appointment or universal suffrage, because we are at all times interested in knowing who this person is and what she is like, in a detail that is not comparable to the extent to which we are interested in the personal characteristics of legislators.

With legislators, it is generally important for us to know which party they align themselves with—and therefore which general set of ideas they will promote. A judge’s party affiliation, on the other hand, is (or should be) irrelevant. What we really care about is whether she is sensitive to reasons and arguments, whether she has good character, whether he has solid technical training, and whether she is capable of acting with fairness, independence, and impartiality. It may be that some people care about which party a judicial candidate votes for because that might say something about her—especially if she votes for the political extremes. But in general, that alignment is not very relevant when it comes to making sure the candidate has the right profile to fulfill her judicial role properly.

State judges in the United States run individually in their district and assume an individual political responsibility—similar, in a way, to the one assumed by the head of the executive branch, but never analogous to that assumed by a legislator who is part of a council, legislature, or assembly. And that, in the socio-political circumstances prevailing in the United States—I will return to this later—may be manageable and meaningful.

Under the Mexican list-based system, however, it is impossible to individually evaluate merits and hold judges accountable for their performance while in office. Since the system applies to the selection of thousands of members of the state and federal judiciaries, it will lead to a chaotic justice

¹¹ Instituto Nacional Electoral, “Avala INE criterios para la distribución de tiempo en radio y televisión en el PEEPJF y Concurrentes,” *Central Electoral*, January 13, 2025, <https://centralectoral.ine.mx/2025/01/13/avala-ine-criterios-para-la-distribucion-de-tiempo-en-radio-y-television-en-el-peepjf-y-concurrentes/>.

system, subordinate to the political majority that sponsors the lists and composed of people whose profiles and abilities we cannot assess before casting a vote that is ultimately reduced to an arbitrary act.

The selection procedure must be aligned with the kind of responsibility associated with the position in dispute. Individual elections seem therefore appropriate for the judiciary, while elections based on lists covering numerous judicial positions simultaneously seem inappropriate. Should the reform have then provided for only one candidate per position to be presented by each branch of public power, perhaps in specially designated judicial mini-districts? It would not have been a good idea either, due to the existence of two additional differences.

II. THE ROLE OF THE JUDICIARY: THE JUDGES IN THE UNITED STATES HAVE A MUCH NARROWER SCOPE FOR ACTION AND DECISION-MAKING

The second crucial difference relates to the power wielded by a judge in the local system in the United States, as compared to their counterparts in Mexico. In a fiercely adversarial system with trial by jury, as that of the United States, trial judges—the role performed by the bulk of elected judges—are extraordinarily constrained and display a quasi-arbitral role. Their demeanor in conducting the proceedings may vary (they may be more or less assertive), but in any event, it is the parties who set the agenda, decide what issues will be submitted to the court, and how the claims will be framed. Since it is the jury who ultimately decides based on the arguments presented by the parties, even at this stage the role of the judge is largely reduced to the role of a sort of technical role referee.

To this we must add another decisive element: *stare decisis*, i.e., strict adherence to precedent (what has been decided by the courts in the past). In a system of *stare decisis*, the judge has little discretion in selecting and interpreting the applicable law, which makes her decisions more predictable and understandable—even in cases where she obtains her position through a popular vote. The substantive law that an elected judge applies in the United States is highly stabilized, and procedural law assigns her a predictable and limited role.

These significant limitations seem to balance the risks we typically associate to the election of judges by universal suffrage: the bias towards what we might call “judicial populism” (judges who see themselves as popular leaders) on the one hand, and “judicial militancy” (judges who see themselves as employees or dependents of interest groups, political parties or other politically powerful actors) on the other. In Latin America, the administration of justice generally departs from this strictly adversarial procedural model and operates with frequently amended bodies of substantive law, in legal environments where *stare decisis* is either non-existent or much weaker than in the United States. In these conditions, we are left without sufficient protections against the risks of populism and militancy.

The Mexican legal system is extraordinarily complex and features many levels of normativity that must be carefully articulated. The procedural rules confer many responsibilities on judges, both in determining the facts and in applying the law — an aspect that has remained unchanged in recent years, even after the introduction of oral proceedings in many areas. Even in criminal cases where an adversarial system is used, the role of the judge is far from minimal. There are no juries, and the complexity of both procedural and substantive law (which the reform does not address) is considerably greater.

Furthermore, as we know, legal and constitutional amendments are constantly being adopted in Mexico, which hinders the stabilization of the law and the development of a solid *stare decisis* practice. Unlike the situation in continental or civil law countries, Mexico has long had rules that distinguish between binding and merely persuasive precedent.¹² However, the culture of following precedent is not as strong as in common law countries, and in any case the obligation to follow precedent does not make sense if the relevant decision-making elements are no longer the same — as occurs when legislative or constitutional changes occur.

The radical nature of Mexico’s 2024 judicial reform — which encompasses both federal and state judiciaries, lower court judges and apex courts, and provides for the dismissal of the entire judiciary in two halves rather than a staggered replacement as current judges reach the retirement age — deepens

¹² Articles 94, 99, and 107 of the Mexican Constitution, and Articles 79, and 215 to 235 of the Amparo Act.

the disanalogy with the situation in U.S local judiciaries, where renewal is gradual and does not jeopardize an established foundation of procedural and legal knowledge that each judge can draw on.

III. THE VULNERABILITY OF JUDGES TO POWER: WHAT THE ELECTION IN MEXICO WILL NOT DECIDE

The third difference is associated not to the size of the power that each judge in Mexico will have, compared to local judges in the U.S., but to the size of the daily challenges she will confront—to the size of her “powerlessness” under the circumstances prevailing in Mexico in 2024-2025, which are likely to continue in the short and medium term. The most worrying element is the de facto dominance of organized crime and the associated level of public and private violence associated with it and, generally, the lack of territorial and social control by the state.

As reflected in the news over the past few months, drug lords have influenced candidacies in municipal elections across much of the country, and, to a less defined but still very concerning extent, in the larger political arenas. The level of political violence that impacted the electoral process of June 2024 is unprecedented, and the degree of daily violence affecting society as a whole—including, notably, rights defenders and judges—will forever mark these years in history books.¹³

That is why in Mexico the popular election of judges in each district from individual candidacies where candidates defend their profile and assume an “individual” public responsibility, as occurs at the state level in the United States, would also be inappropriate. And this is why the recently approved re-gulation is so worrying—not to mention the fact it concurrently eliminates one of the tools the judiciary had at its disposal to protect judges: changing their geographic adscription (the current system generates an unbreakable link between a judgeship and its constituents).

¹³ Laboratorio Electoral, “Resultados finales del monitoreo de la violencia electoral,” *Laboratorio Electoral*, 2023-2024, <https://laboratorioelectoral.mx/violencia>; Data Cívica, Animal Político, and México Evalúa, “Votar entre Balas,” *Data Cívica, México Evalúa, and Animal Político*, <https://votar-entre-balas.datacivica.org/>; see also the report of Integralia, “Primer reporte de violencia política,” February, 2024, <https://integralia.com.mx/web/wp-content/uploads/2024/02/Primer-reporte-de-violencia-politica-de-Integralia-2024.pdf>.

The popular vote system—which is, incidentally, exceptional worldwide because it raises problems that are limited but not eliminated in the United States¹⁴—is highly problematic in Mexico because the circumstances in which we find ourselves in make it impossible for the election and reelection of judges to focus on the factors that, for better or worse, frame state judicial elections in the United States (where the system applies only to a part of the judiciary). It would be of little use to change the long lists of names with two or three candidates if the context does not allow people to step forward voluntarily—if they are forced to do so by external pressure. Their qualifications for the position become moreover irrelevant if their performance is largely determined by these much more powerful external factors.



An ambitious reform in the Mexican justice system called for a serious, calm, and informed debate, attentive to analogies and disanalogies, sensitive to both principle and consequence-based analysis, in dialogue with many people and institutions. Not a debate taken to shouts, fueled by slogans, or at best accompanied by hasty and ultimately flawed arguments. Hopefully, there will be an opportunity to correct the major problems and gaps of the judicial reform of 2024 and launch the construction of a well-thought-out alternative, genuinely focused on overcoming the many problems of the judicial system in our country.

¹⁴ Michael S. Kang and Joanna M. Shepherd, *Free to Judge. The Power of Campaign Money in Judicial Elections*, Stanford, Stanford University Press, 2023; Amrit Singh and Adriana García, “Electing Judges in Mexico? It’s a Bad Idea,” *The New York Times*, September 4, 2024; Irene Tello Arista, “Eslóganes y temas en campañas judiciales,” *El Universal*, August 23, 2024, <https://www.eluniversal.com.mx/opinion/irene-tello-arista/esloganes-y-temas-en-campanas-judiciales/>.

Chapter 3

Judicial Elections in Mexico: The Risk of Capture

Guadalupe Salmorán-Villar¹

I. INTRODUCTION

Resorting to the popular vote as a general mechanism for selecting members of the judiciary is by no means a common practice. In this regard, Mexico has become the only country in the world to use universal suffrage to renew all federal and local judicial levels.

However, from my perspective, electing judges through popular elections undermines the principle of judicial independence, specifically the guarantee of judges' tenure and the citizens' right to an impartial and effective justice system.² One of the immediate consequences of the 2024 reform, for

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² On this topic, see César Astudillo, "La reforma al Poder Judicial. Efectos en el estatus y la mecánica de elección—por voto popular—de sus integrantes," in Sergio López Ayllón et al. (eds.), *Análisis técnico de las 20 iniciativas de reformas constitucionales y legales presentadas por el presidente de la República (febrero 5, 2024)*, Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024, pp. 287-299; Javier Martín Reyes, "La elección popular de los poderes judiciales en México: breve radiografía del Plan C," in Sergio López Ayllón et al. (eds.), *Análisis técnico de las 20 iniciativas de reformas constitucionales y legales presentadas por el presidente de la República (febrero 5, 2024)*, Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024, pp. 319-332; Guadalupe Salmorán Villar, "¿Jueces a las urnas? Elección por voto popular del tribunal electoral y la Suprema Corte," in Javier Martín Reyes and María Marván Laborde (eds.), *La iniciativa presidencial de reforma electoral: análisis técnico del Plan C electoral*, Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024, pp. 77-88.

example, is the forced and massive removal of sitting judges, either in the 2025 or 2027 elections, as applicable.

This measure violates one of the most important guarantees of judicial independence: tenure security, which prohibits the premature removal of judges unless there is a justified cause. Furthermore, this guarantee requires that removals be based solely on legally predefined circumstances, such as the completion of a term of office, reaching the retirement age, committing serious disciplinary infractions, or demonstrating incompetence in fulfilling judicial duties—none of which apply in this case.³

The elective system, as established by the Obrador-Sheinbaum reform, will allow for a complete purge of the judiciary, clearing the way to appoint judges based on partisan preferences and political ties, thereby undermining the right to an impartial judicial process. This is because the electoral system, which forces judges to compete for their positions in the same arena as government officials and elected representatives, is designed precisely to reflect the moods of the electorate. Consequently, it is expected that elected judges, rather than resolving cases based on the strict application of the law, will be influenced by voter preferences and opinions, as well as by the demands of political forces and private interest groups (both legal and illegal) that support their candidacies. In short, the electoral system will not only allow judicial officials to be influenced by partisan politics—it will subordinate them to it.

Nevertheless, the issues surrounding judicial elections under the 2024 reform are not limited to their immediate effects or the inherent characteristics of any system based on popular voting. In this paper, I argue that the regulatory design of these elections not only fails to ensure the selection of the most suitable judicial candidates but also makes judicial institutions susceptible to capture by the government and the majority represented in Congress. Despite the complexity of the electoral system for appointing federal judges, this analysis focuses on three aspects that I consider decisive in tilting the process in favor of the executive and legislative branches, making it harder

³ Venice Commission, “Report on the Independence of the Judicial System Part I: The Independence of Judges,” *Council of Europe*, [https://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD\(2010\)004-e](https://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD(2010)004-e).

for the most qualified candidates to appear on the ballot: the candidate selection stage, the criteria for selecting applicants, and the functioning of the committees responsible for these evaluations.

Beyond the introduction, this essay is divided into three sections. In the first, I examine the scope of judicial elections and some of their implications for the Mexican justice system. In the second, I analyze some of the risks of political bias and judicial capture inherent in the constitutional design of judicial elections. Finally, I offer reflections on the adverse effects of the popular election system for federal judgeships on judicial independence, impartiality, and credibility.

II. JUDICIAL ELECTIONS: IMPLICATIONS FOR THE FEDERAL JUSTICE SYSTEM

Unlike Bolivia—the only country in Latin America that elects its highest courts by popular vote⁴—in Mexico, electoral processes to replace both political leadership and federal judges will take place simultaneously and culminate in a joint election day, held on the first Sunday of June in the corresponding year.

The synchronization of judicial elections with the legislative electoral cycle increases the likelihood that voters, influenced by partisan rhetoric and political campaigns, will favor candidates supported by their preferred political party.⁵ However, it is important to highlight that the first judicial elections, scheduled for June 1, 2025, will take place through a special electoral process, whose rules are primarily set out in the transitory articles of the constitutional reform that introduced this electoral system.⁶

⁴ On this topic, see Luis Pásara, *Elecciones judiciales en Bolivia. Una experiencia inédita*, Washington, Due Process of Law Foundation, 2014; Luis Pásara, *Elecciones judiciales en Bolivia: ¿aprendimos la lección?*, Washington, D. C., Due Process of Law Foundation, 2018; Amanda Driscoll and Michael J. Nelson, “Crónica de una elección anunciada. Las elecciones judiciales de 2017 en Bolivia,” *Política y Gobierno*, no. 1, vol. 26, 2019, pp. 41-64; International Commission of Jurists (CIJ), the Latin American Federation of Circuit Judges (FLAM) and the Due Process of Law Foundation (DPLF), *Ni elecciones judiciales integrales, ni reforma de la justicia en Bolivia*, 2024.

⁵ This possibility increases if we consider that the candidate lists will specify the state authority that nominated them.

⁶ I refer to the “Decree Amending, Adding, and Repealing Various Provisions of the Political Constitution of the United Mexican States Regarding Judicial Reform,” *Official Gazette of the Federation*, September 15, 2024. (“Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de reforma del Poder Judicial,” Diario Oficial de la Federación.)

As I have noted, the electoral system affects a complex and diverse array of judicial offices at all levels of government. Nevertheless, it operates under a model that treats the Mexican judiciary as if it were a homogeneous bloc with identical functions and needs, without considering the specific nature and responsibilities of each judicial body.

Judicial elections have displaced one of the key features that previously characterized Mexico's justice system: the diversification of judicial appointment mechanisms. These mechanisms, while involving all three branches of government, did so in different ways and with varying degrees of influence at different stages (nomination, confirmation, and appointment) of the selection process.

The popular election system, as I have pointed out, imposes a massive and simultaneous renewal of judges. This contrasts with the pre-reform judicial appointment process, where judicial replacements—often staggered, as in the case of the Supreme Court and Electoral Tribunal—occurred in separate cycles, independent of the periodic turnover of government officials and elected representatives. This structure made it difficult for any single administration or political group to take full control of the judiciary, as appointments were spread out over time.

However, the new synchronized renewal scheme established by the judicial reform significantly increases this possibility, as it allows public authorities—especially the executive and legislative branches—to nominate candidates aligned with their political interests. This is particularly evident in the newly created Judicial Discipline Tribunal, whose members will be entirely elected in 2025. The same applies to the Supreme Court and the Regional Chambers of the Electoral Tribunal, which will be completely replaced under the current administration. A similar phenomenon could occur with the Collegiate Circuit Courts and District Courts. Although these bodies will be partially renewed, half of their judges will be replaced in 2025 and the other half in 2027. Never before in Mexico's contemporary history has there been such an extensive and concurrent replacement of federal judges within a single administration. In 2025 alone, through the special elections, 850 judicial positions will be filled across both courts.

Thus, in reality, the only judicial body that will not be fully replaced in 2025 is the Superior Chamber of the Electoral Tribunal—only two vacancies will be filled, vacancies that were deliberately left open by the ruling party, which used its Senate majority to block appointments since October 2023.⁷

III. THE RISKS OF POLITICAL CAPTURE AND BIAS IN FEDERAL JUDICIARY ELECTIONS

The electoral model established by the Obrador-Sheinbaum reform has been defended as an undeniable democratic advancement. However, the reality is that it is neither an open, direct, nor transparent process.

It is not open because not every citizen can participate. To run for a judicial position, candidates must, among other requirements, secure the backing of one of the public authorities involved in the selection process. It is also not direct, as the President, Congress, and the Supreme Court—through their respective committees—determine which candidates will have the opportunity to seek the public’s vote. Even less is it transparent, as the verification of legal and constitutional requirements, as well as the assessment of candidates’ qualifications—both key stages in securing a judicial candidacy—occur behind closed doors, leaving room for political bargaining.

On the other hand, it may seem that the Constitution grants equal weight to the public authorities involved in the nomination of candidates. However, a more detailed analysis reveals that the institutional design of judicial elections, rather than strengthening checks and balances between these branches of government, grants the Executive and its corresponding political party a predominant role in the selection of judicial candidates.

First, the Presidency of the Republic gains influence over judicial bodies in which it previously had no involvement. Notably, in addition to the Supreme Court and the Disciplinary Tribunal (created by the judicial reform), the federal executive gains direct influence over the composition of one-third of the chambers of the Electoral Tribunal. It also acquires the same level of

⁷ The legislators who approved the judicial reform decided to grant special treatment to this body: extending until 2027 the terms of the five magistrates currently in office. This decision is not only exceptional, in the sense that it constitutes an exception to the general rule, but it also establishes a privative norm—prohibited by the Mexican Constitution (Article 13)—by granting a privilege specifically to named judges, something that does not exist for the Supreme Court or any other judicial position.

power, in equal proportion, over the appointment of judges in the Collegiate Tribunals and District Courts across the country.

Moreover, considering the current distribution of political power following the last federal electoral process—in which the ruling party, MORENA, and its minor allies secured control over the federal government and Congress—the judicial electoral system enables them to define two-thirds of judicial candidates. The irrelevance of other political forces in determining judicial nominations ensures that only candidates aligned with the ruling party have any real chance of being elected. It is worth emphasizing that this power distribution will persist for at least the next six years, meaning that the government and its allied parties will hold a comfortable majority, allowing them to unilaterally select candidates without opposition—those who will then seek to win public approval.

Third, it is essential to highlight the deficiencies in the procedure for evaluating judicial candidates. According to the Constitution, applicants must submit “a three-page essay justifying their candidacy and provide five letters of recommendation from neighbors, colleagues, or individuals endorsing their suitability for the position.” However, this documentation is inadequate and insufficient to assess the integrity, knowledge, and competence required for the role. Additionally, the Constitution mandates that the “best-evaluated candidates” should be those who have demonstrated “honesty” and “good public reputation”—qualities that are highly subjective and, as such, seem destined to be rendered meaningless.

To process candidacies, each public authority—the Presidency of the Republic, Congress, and the Supreme Court—must form an evaluation committee composed of “five individuals recognized in the legal field.” These committees play a fundamental role, as they assess whether candidates meet the necessary requirements and evaluate their suitability. However, these bodies introduce yet another set of issues. On one hand, neither the Constitution nor secondary laws specify how each committee should be composed. Their formation is left to the discretion of each state authority, as they are not required to provide any public justification for their appointments.

On the other hand, the legal framework grants committees broad discretion. First, each committee is allowed to establish its own operating rules.

Second, as previously mentioned, the committees must assess the “suitability” of judicial candidates. However, neither the Constitution nor electoral laws define what this term means or how it should be measured. Furthermore, each committee is free to determine “the methodology for evaluating the suitability of candidates.” While the first issue leads to inconsistent committee structures, the second fosters discretion in identifying the “best” candidates. In any case, it will not be the “best-evaluated” candidates that the committees nominate, but rather those selected by chance. Indeed, the Constitution mandates that each committee use a public lottery as a mechanism to “refine” the lists of “best-evaluated candidates” in order to meet the required number of nominations for each position. Once this process is completed, these lists must be approved by the public authorities, after which the Senate forwards them to the National Electoral Institute to proceed with organizing the electoral process. Thus, it is clear that merit, experience, and moral integrity are far from being the decisive criteria in selecting the candidates who will ultimately be presented to the public on election day.

IV. CONCLUDING REFLECTIONS

The system of popular election for federal judgeships in Mexico poses significant risks to both judicial independence and the quality of the appointed individuals. While this model aims to bring the judiciary closer to the citizenry, its regulatory design presents several structural problems that undermine the fundamental pillars that should characterize any democratic judicial system: impartiality, independence, and the suitability of judges.

As analyzed throughout this paper, the Mexican system of judicial elections tends to prioritize political affiliations as key criteria for securing any judicial position. By operating under the same electoral cycle as elections for political representatives, this system fosters a dynamic in which judges may feel inclined to please the political forces that nominated them, thereby compromising their impartiality in performing their duties.

Moreover, the degree of discretion characterizing the elective system — both in the composition of the evaluation committees and in the nomination of candidates—reinforces the predominance of political criteria over the expertise and preparation of applicants. The evaluation committees, by design,

can hardly ensure an objective process, as they are formed without clear or transparent criteria, leaving them at the mercy of the public authorities that dominate the political landscape.

It is particularly concerning that the executive and legislative branches concentrate significant control over defining the profiles of candidates submitted to public scrutiny. This not only politicizes judicial appointments but also places judges, magistrates, and justices in a vulnerable position, exposing them to potential pressures from those who nominated them and jeopardizing their ability to perform their duties without fear of retaliation.

In this scenario, the role of the citizen vote is secondary and marginal, as it is reduced to merely ratifying or rejecting candidates previously selected by state organs. This dynamic may not only exacerbate concerns regarding the lack of judicial independence and impartiality but also contribute to eroding the credibility of the judiciary by shifting its source of legitimacy into the realm of national politics.

For all these reasons, it is difficult to argue that this elective system will strengthen the legitimacy and technical quality of the Mexican justice system. On the contrary, its constitutional design appears more oriented toward consolidating political control over judicial institutions, sacrificing the progress previously made in terms of professional excellence and institutional independence.

Chapter 4

The Key to the Judicial Branch Election: The Allocation of Positions by Districts

Alonso Zepeda Celis¹

The extraordinary electoral period that began with the publication of the Obrador-Sheinbaum judicial reform, which will take us to the polls on June 1, 2025, involves the election of 881 positions in the Federal Judiciary, plus those local judicial positions elected in each state. This implies not only a logistical and budgetary challenge for the National Electoral Institute (*Instituto Nacional Electoral*, INE), but also a legal challenge due to the lack of certainty of rules and procedures to carry out the election.

In addition to the fact that an electoral process of this magnitude has never been carried out before, it is worth mentioning the logic of this judicial reform. That is, no participation of political parties, budget reduction, multiple candidates per position without political structure, prohibition for candidates to receive public or private financing, reduced campaign times, impossibility of radio and television times for each candidate, etc.

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In this context, the INE has had to determine the geographic framework that will govern the election, in such a way that it is materially possible for the 881 federal level positions to be elected, equivalent to more than four thousand candidacies by 2025. Thus, in November 2024, the General Council of INE, by unanimous vote, approved the harmonization of the electoral geographic framework by which the traditional district division that usually defines congressional candidacies was homologated with the territorial division of the 32 judicial circuits determined by the Federal Judiciary Council.²

These judicial circuits coincide, in most cases, with the territory of each federative entity and determine the geographic space over which each of the judges and magistrates of the Federal Judicial Branch exercise jurisdiction, regardless of some whose specialty gives them jurisdiction over the entire Republic.

Currently, electoral districts serve as the territorial criterion through which the INE determines the 300 candidates for federal deputies. Each district has an average of 350,000 citizens with the right to vote residing within it. In such a way that the 300 deputies elected by relative majority are voted for by the same number of voters, thus guaranteeing fairness in the contest in all electoral districts, and that the weight and value of the vote is equal among all citizens.

In turn, these districts determine the five territorial constituencies into which the country is divided and according to which the rest of the 200 deputies are elected by the principle of proportional representation (*plurinominal*), whose function is that not only the majorities have legislative representation, but also the citizens who voted for political parties other than those of the majority, and their assignment is made through a formula depending on how many votes each political party obtained.

The problem is that, at the moment of homologating this situation *vis-à-vis* the judicial circuits, the logics are opposed. In other words, electoral districts are governed according to population, while judicial circuits are governed according to the subject matter of the disputes in a given territory.

² Agreement INE/CG2362/2024 of the General Council of the National Electoral Institute approving the electoral geographic framework to be used in the extraordinary electoral process 2024-2025, regarding the election of judges of the Federal Judiciary.

Let us take the example of the circuits of the states of San Luis Potosí and Hidalgo: although the electoral roll of the former is composed of 2,216,416 citizens, 17 positions of federal magistrates and judges will be elected, plus the federal positions of national election, such as the Supreme Court of Justice of the Nation, the Electoral Tribunal, and Court of Judicial Discipline; or regional election, in the case of Regional Chambers of the Electoral Tribunal. In the state of Hidalgo, on the other hand, with a slightly larger electorate of 2,422,155 people, only 11 federal magistrates and judges will be elected, evidencing that the number of judges does not respond to a population logic.

Under such logic, the problem is highlighted when the number of positions to be elected increases. The case of Mexico City is exemplary: 168 federal judges and magistrates will be elected in 2025 by an electorate of 7,974,290 people. If each of those voters were to choose their judges, on June 1, they would have to choose between 624 candidates for magistrates and 384 candidates for federal judges.

Of course, this is not feasible, so the INE decided to distribute the number of positions in what it called *electoral judicial districts*, which is basically a territorial division to simplify the judicial election. It works by grouping traditional electoral districts so that each grouping of citizens elects as close to 10 positions of judges and 10 positions of federal magistrates as possible.

Thus, Mexico City will be divided into 11 electoral judicial districts, each with approximately 700,000 voters, who will choose between 14 and 16 judicial positions. The problem? Mexico City concentrates controversies that do not necessarily affect residents or only residents, such as criminal, mercantile, or specialized economic competition and telecommunications matters.

This is simply explained by the fact that Mexico City is the economic and political center of the country. For that reason, most federal matters take place in this city. Consequently, controversies are also settled there, even if the individuals do not necessarily reside in the entity.

Such is the case of the collegiate courts and tribunals specialized in economic competition and telecommunications, which resolve any issue related to the corporate operations of large companies, as well as radio and television concessionaires. An industry that in 2024 represented 1.6% of the national

GDP,³ a figure higher than what twelve federal entities contribute to the national GDP; however, according to INE rules, they will be elected only by the voters of Mexico City because that is where they reside.

In short: the problem is that the decisions of these judges have an impact on the entire country because it is a priority industry with national repercussions, ranging from indigenous radio concessions in state of Oaxaca, for example, to the concessions of Grupo Televisa or those of Federal Commission of Electricity Internet for All. However, their election will be determined by a single judicial electoral district in Mexico City, that is, by approximately 700,000 voters. This, needless to say, drastically undermines one of the foundations and justifications of the Obrador-Sheinbaum reform: the democratization of the judiciary, under the logic of popular vote and representation.

Furthermore, if we consider a percentage of participation similar to that of 2024, in which the office of President of the Republic was elected, in the best-case scenario, 60 % of such voters will turn out to vote on June 1. Therefore, it will be enough for the candidates to obtain the majority of the 420,000 votes to become judges in this matter, whose decisions will have a direct impact on 1.6 % of the national GDP.

Let's also consider that the electoral judicial district in which this position will be elected has already been defined by the INE and coincides with a territory dominated by the ruling party. It is enough to appreciate the risks that a splitting or implementation of this type of judicial reform would bring. It is worth remembering that, since the lists of candidates have already been defined by the evaluation committees, the INE has the task of determining precisely which candidates correspond to which electoral judicial districts.

Thus, in view of the public reports of this situation at the beginning of February 2025, INE intended to correct its geographic framework and create a method for the assignment of positions. This would be done through a public lottery based on lists of candidates classified by specialty, postulant evaluation committee, and gender, in which each candidate would be assigned an alphanumeric code, with the purpose of not knowing who holds which candidacy and guaranteeing the most objective assignment possible.

³ National Institute of Geography and Statistics (*Instituto Nacional de Estadística y Geografía*, INEGI).

Despite this, the assignment procedure continues to have irregularities, since part of the alphanumeric code assigned to each candidate includes a letter that represents the specialty or subject in which he/she will be involved, ranging from A to W. Thus, the administrative matter has the letter A, the specialized matter in economic competition and telecommunications the letter B and the appeal in civil and administrative matters, specialized in economic competition and telecommunications, the letter F. However, within the categories contemplated by INE there are also *civil and economic competition broadcasting* (sic) with the letter H and *economic competition broadcasting* (sic) with the letter L.⁴

This is particularly relevant given that the allocation lottery is conducted within each area of specialization. Therefore, the more specialization groups there are, the fewer candidates there will be in each group, and consequently, the higher the probability that specific candidates will be assigned to certain judicial districts. It is striking that these kinds of “errors” appear precisely in relation to subject matters as crucial as economic competition and telecommunications.

But leaving speculations aside, what is undeniable is that this reflects that the INE is regulating matters it does not know, since there are precisely two categories regarding economic competition and telecommunications matters, and to which the letters B and F correspond according to their classification. In such a way that it is not clear to which positions it intends to assign the letters H and L; furthermore, even though it is its obligation to determine accurate and accessible processes based on objective criteria, it does not seem to have sufficient incentives to investigate and understand the jurisdictional dynamics of the positions to be elected.

Under the same premise, it seems to lose sight of the fact that the assignment of positions is not only for general matters (administrative, criminal, civil), but that there is already an implicit assignment of positions for those specialized jurisdictional bodies that, despite having a national impact, it has been decided without objective criteria that their election should not

⁴ Annex to the Agreement of the General Council of the National Electoral Institute INE/CG63/2025, February 10, 2025.

only be in a specific federal entity—Mexico City—but also in a particular judicial district.

Now, this situation is not exclusive to telecommunications; it can even be more serious in matters such as criminal law because of what is at stake: the freedom of each country's inhabitants, revenge against political adversaries, and eventual compromise with organized crime. In this area, although INE tried to correct the errors in its geographic framework, a couple of clarifications are worthwhile in measuring the magnitude of its responsibility.

First, it is essential to define that judges in criminal matters can be classified in three categories depending on the procedural moment in which they intervene: first, there are the control judges, in charge of imposing measures such as preventive detention during the investigation of the crime; then, the trial judge is in charge of directing the process when a person has already been charged with responsibility and determines the guilt or innocence of the accused in question; and third, the enforcement judge, who oversees compliance with the sentence imposed.

However, according to the geographic framework of the INE, such judges are catalogued within the same subject—criminal—without any difference. Thus, although the very agreement that determined the harmonization has the purpose of preventing criminal judges from being elected exclusively by certain judicial districts, since it does not include the institutional design of the positions, it does not solve such possibility.

In such a way that, in accordance with the method of assigning positions and since there is no differentiation within the judges in criminal matters, it has opened the possibility that, for example, all the positions of control judges could be elected in one or two electoral judicial districts. Leaving it to the discretion of such electors who may impose preventive detention for up to 24 months on any person.

Now, considering the serious problem of insecurity that the country suffers, a not minor risk of this bad public policy of the INE is that organized crime groups co-opt the elections for such positions. Indeed, it is even more relevant that not all judges in any of the stages of the criminal process are elected in a single judicial district where organized crime has control, as in Jalisco where the judges in criminal matters of the maximum security prison

of Puente Grande—where the leader of the Jalisco Cartel New Generation could be requested to be arrested—will be elected.

Another risk: if the election of these positions is concentrated in a judicial district, in which the ruling party has control, considering the links that can be confirmed today from the first profiles of several candidates, the decision on issues as sensitive as the freedom of persons may be subject to political interests.

Delving deeper into the geographic framework, an additional issue arises: the principle of universal and direct voting. Both the Constitution and the American Convention on Human Rights provide that the vote must be *universal and equal* for all citizens.⁵ In other words, the vote of a person in Mexico City must be worth the same as the vote of a person in the state of Colima.

However, with the judicial reform and under the geographical framework of INE, the suffrage begins to have modalities that break with the principle of universality and equality. Let's take as an example the federal elections of 2024 in which the president of the Republic, senators, and federal deputies were elected. In this case, each citizen at the national level could exercise one vote for the office of president, one vote for the office of senators, and one vote for the office of federal deputies.

Thus, both citizens in the state of Colima and those in Mexico City exercise votes that amount to the same thing: one office per vote and the same number of offices.

However, according to the INE's model for the division of electoral judicial districts, people in Mexico City will cast between 14 and 16 votes for judges and magistrates according to their judicial district. In comparison, in the state of Colima they will cast 6 votes for the same kind of positions.

This means that the vote will not be universal and equal, since there will be a disparity between states in the number of votes that citizens are entitled to cast for positions that coincide in nature. Putting it in numbers, out of the universe of 881 positions of the Federal Judicial Branch that will be elected in 2025, the people of the state of Colima will elect only 6 corresponding to

⁵ Article 35 of the Constitution states: "The rights of citizens are: [...] To vote in popular elections." Similarly, Article 23 of the American Convention on Human Rights provides: "All citizens shall enjoy the following rights and opportunities: [...] To vote and to be elected in genuine periodic elections, held by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters."

judges and magistrates plus 19 of national and regional election—Supreme Court of Justice of the Nation, Court of Judicial Discipline, Superior Chamber of the Electoral Tribunal and the corresponding Regional Chamber of the Electoral Tribunal.

In contrast, the people of Mexico City will elect 168 positions corresponding to federal judges and magistrates, plus the 19 national and regional elections. In other words, Mexico City voters will be able to exclusively elect 20 % of the federal positions to be elected in 2025, while residents of the state of Colima will exclusively elect only 0.6 % of such positions.

The disparity is even proven within the same circuit of Mexico City, as the Iztapalapa judicial district will elect 14 positions, while the Miguel Hidalgo judicial district will elect 16, even though both districts are part of the same judicial circuit. This will enhance the voting rights of those who vote in Miguel Hidalgo, as they will be able to choose a greater proportion of the Federal Judiciary.

The problem does not end there, because the vote will not be direct, considering that the elected positions will not necessarily be those that resolve the controversies of their electors. In fact, from the universe of positions to be elected, according to the division of judicial districts, citizens will only vote for some of the positions that could impart justice, but that could well resolve controversies of citizens who did not vote for them. This breaks with the natural principle of suffrage, which is the participation of citizens in the election of the officials who precisely affect their life and well-being.

Therefore, the geographic framework model created by the INE not only implies risks with respect to the allocation of positions but also generates a breach of the principle of universal, equal, and direct suffrage. Hence, INE even intended to adjust the geographic framework so that the electoral rolls of each judicial district within the same circuit would not vary among themselves by more than 20 %.

Consequently, they adjusted the judicial districts of the State of Jalisco, the State of Mexico, the State of Morelos, and the State of Tamaulipas. Still, they did not address any issue to guarantee the universality and equality of the vote. This problem has even been recognized by INE's Electoral Counselor, Uuc-Kib Espadas Acona, who in an extraordinary session of the General

Council stated that there were errors in the design of the agreed initially constituencies, fundamentally affecting the relative weight of the vote of each citizen, so that the following June 1st the vote will not be worth the same and the citizens in Mexico City will elect a substantially larger mass of judges, including 14 magistrates and judges who have national jurisdiction but will only be elected in Mexico City.⁶

Thus, although the INE seems to have reacted to the public denunciation of the problems involved in the geographic framework that defines the election of the Federal Judiciary, the reality is that it did not substantially modify its criteria to guarantee a correct election of the positions on June 1st. It can be concluded, then, that at least in this electoral process, the vote will no longer be universal, equal, and direct, as well as that several judges will be determined by a minimum percentage of voters in comparison with the national implications of such positions and under extremely high democratic risks.

The only thing left to do is to continue observing the development of the process of assignment of positions that INE will carry out—especially to know for which positions we will be able to vote according to its criteria—but, above all, that from citizen participation, media and academia, analyze the new mechanisms that are extremely dangerous for the democratic legitimacy that they intend to erect with this judicial reform. This reform could not only fracture even more the stability of the institutions of administration of justice in our country, but also those that safeguard democracy and the republican principle that frames our society.

⁶ Extraordinary session of the General Council, February 10, 2025. Regarding the approval of the modification of Agreement INE/CG62/2025, February 10, 2025, on the Geographic Framework for the extraordinary electoral process 2024-2025.

Chapter 5

The Judicial Career after Obrador-Sheinbaum's Reform

Andrea Pozas Loyo¹ and Julio Ríos Figueroa²

The judicial career regulates the selection, evaluation, promotion, and separation of trial and appellate court judges and other key officials in the Federal Judiciary through competitive examinations that evaluate capacities and performance.

This judiciary's civil service was created in Mexico with the 1994 reform and was reinforced with the 2021 reform. Its aim was to ensure that federal judges progressively acquire the necessary knowledge to perform their duties and to give them the expectation of stability and professional development through experience, continuous learning, and the professionalization of their work. During the thirty years that the judicial career was operative, it succeeded in building an organizational identity that strengthened the autonomy and the collective personality of the Federal Judiciary. The judicial career gradually promoted judges' independence from, and neutrality towards, the elected branches of government. It was key in the consolidation of the judiciary as an effective third branch of government in the system of checks and balances.

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The reform of 2024, sponsored and promoted by former President López Obrador and current President Claudia Sheinbaum, profoundly changes the judicial career. The popular election of trial and appellate court judges, the highest positions in the career, decapitates and hollows it. Moreover, the Obrador-Sheinbaum reform creates a dual model of judicial selection that splits the logic that guides the profession, as it merges two arguably incompatible sets of incentives in the selection, evaluation, and promotion of federal judges (and state judges as well, but we focus in this chapter on the federal judiciary).

On the one hand, the first three levels of the judicial career—officials, legal aides (*actuarios judiciales*), and, and clerks—will continue operating according to the logic of the gradual professionalization, accumulation of experience and knowledge. On the other hand, the top two ranks, namely trial and appellate court judges, will be selected by popular vote and thus operate according to an electoral logic (the justices of the Supreme Court, the electoral magistrates, and the magistrates of the newly created Tribunal of Judicial Discipline will also be elected but they are not part of the judicial career).

In this chapter, we focus on the impact of the 2024 reform on the judicial career and discuss its potential consequences both within and outside the Federal Judiciary. In the first part, we briefly describe the basics of the judicial career in Mexico before the 2024 reform, along with some relevant data on its performance in the thirty years since its creation. In the second part, we present the main features of the 2024 Obrador-Sheinbaum's reform focusing on the features that directly affect the judicial career. Finally, we discuss the possible consequences of these changes based on the incentives created by the reform and some data on the immediate effects that have already been observed.

I. THE JUDICIAL CAREER: 1994-2024

The judicial career in Mexico was introduced in 1994 and expanded in 2021. Prior to 1994, Mexican trial and appellate court judges were handpicked by the justices of the Supreme Court (who were appointed by the President of the Republic and confirmed by the Senate). The lack of regulation of the mechanisms of selection, evaluation, and discipline of federal judges led to the incorporation into the judiciary of non-professional profiles, monitoring problems, and corruption scandals especially due to the exponential growth

in size of the Federal Judiciary since the second half of the 1970s.³ The 1994 reform aimed to solve these problems through the creation of a merit-based system of judicial selection better suited to the emerging democratic system.

The judicial career established the selection of judges through competitive examinations aimed at identifying capacities and skills. It also created a Judicial Council empowered with the administration of the system of evaluation, promotions, and disciplinary measures of all federal judges. In 2021, the judicial career expanded to include six positions: judicial officer, legal aides (*actuarios judiciales*), clerks to trial and appellate court judges, and trial and appellate court judges. In other words, it covers everything from the support staff in the jurisdictional function (officers and actuaries) to those who study legal issues and draft decisions (clerks), and, of course, the judges who are ultimately responsible for the final decisions and judgments. Different merit-based selection procedures applied for each position, including a three-part competitive examination for the two top positions.

As of May 31, 2024, according to the Federal Judicial Council, a total of 17,402 people were part of the judicial career (60 % judicial officers, 9 % legal aides, 12 % trial court clerks, 12 % appellate court clerks, 2 % trial court judges, and 3 % appellate court judges).⁴ As said, the judicial career was a recruitment and training process based on gaining experience and professionalization of the members of the Federal Judiciary. On average, it took 16 years to become a trial court judge and 19 years and 8 months to become an appeals court judge. Before reaching these positions, a person typically began as judicial officer (averaging 3 years and 4 months in that capacity), then became an *actuario* or legal aid (averaging 1 year and 6 months), and then a clerk (averaging 11 years and 4 months). Trial judges remained in office for an average of 6 years, while appeals judges were in office for an average of 12 years and 4 months.

During the exercise of their tenure at the various stages of the judicial career, the individual acquires experience and engages in a process of continuous

³ Andrea Pozas Loyo and Julio Figueroa Ríos, "Anatomy of an informal institution: The 'Gentlemen's Pact' and judicial selection in Mexico, 1917-1994," *International Political Science Review*, vol. 39, no. 5, 2018, pp. 647-661.

⁴ We thank Jacqueline Martínez Uriarte for providing us the data from the Federal Judicial Council.

education (that is important for the evaluations of performance and promotions). Based on the same data, as of May 31, 2024, among district judges (750), 15 % held only a bachelor's degree, 13 % had at least a postgraduate specialization diploma, 53 % held a master's degree, and 18 % had a doctorate. Among circuit judges (885), 15 % held only a bachelor's degree, 10 % had at least a specialized diploma, 47 % held a master's degree, and 26 % had a doctorate. Also, 94 % of judicial training was provided through the Federal School of Judicial Training or national public institutions. To summarize, in the thirty years of existence of the judicial career until the 2024 reform, the Mexican state invested a considerable amount of material and human resources in strengthening the Federal Judiciary.

Of course, the judicial career was far from perfect. There was a process of trial and error in the design and conduct of examinations, which led to instability in the expectations of participants and interested candidates. In addition, some selection procedures were marred by corruption scandals. Another thorny issue was the relatively high number of family relatives working in the Federal Judiciary, with even clear cases of nepotism (the misuse of the family link to obtain an undue work-related benefit).

The exclusion of women as they progressed in the judicial career and hierarchy was also a significant unresolved issue within the organizational structure. Thanks to the efforts of sectors within the Federal Judiciary and the criticism and cooperation of political and social actors, many of the outstanding issues relating to judicial careers had gradually been addressed with varying degrees of speed and effectiveness.

In this respect, despite some controversial aspects, the 2021 reform represented a significant step forward that strengthened the judicial career, including mechanisms to address nepotism and the promotion of gender parity.⁵ However, the 2024 Obrador-Sheimbaum's reform undermines the foundations and distorts the purpose of the judicial career, reversing much of the progress made.

⁵ Michael Negrete, *El precedente judicial en la jurisprudencia de la SCJN*, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2022; Julio Ríos Figueroa, *El buen juez por su casa empieza*, México, Mexicanos Contra la Corrupción y la Impunidad, 2019.

II. THE JUDICIAL CAREER IN THE OBRADOR-SHEINBAUM REFORM

The 2024 reform fundamentally changes judicial careers by bifurcating the nature and logic of the mechanisms for the selection, evaluation, promotion, and dismissal of personnel within the Federal Judiciary.

This reform introduces two different and inconsistent logics of becoming a federal judge: The first three levels of the organizational hierarchy—judicial officers, legal aides, and clerks—will follow the professionalization logic of the judicial career, while the top two levels—district judges and circuit judges—will follow an electoral logic. The reform also provides for the establishment of a Tribunal of Judicial Discipline, which will do some of the tasks previously performed by the Federal Judicial Council and whose members will also be elected. This body will have the power to sanction and dismiss judges, and there will be no external body to which its decisions can be appealed.

In 2025 and 2027, elections will be held for all federal district judges and circuit judges (half each year, for a total of close to two thousand positions). Citizens will vote from candidates selected by three committees each appointed unilaterally by the President, Congress, and the Supreme Court. Half of sitting judges whose position was randomly selected to be open for the election in June 2025 could either resign and register to participate in the election (automatically going to the ballot, with no screening by the selection committees) or hold their position until August 31, 2025 (one day before the elected judges take office). The second half will be elected in June 2027.

The requirements for aspiring candidates to become district or circuit judges are minimal: a law degree with an overall GPA of 8 out of 10 (and 9 out of 10 in subjects relevant to the position, say criminal law for candidates to criminal courts), five years of experience in a legal field, submission of a three-page essay explaining their motivations for their candidacy, and five reference letters from neighbors or individuals who are acquainted with the candidate and support their suitability for the role.

Each one of the three selection committees (from the Executive, Legislative, and Judicial branches) nominates up to two candidates for district and circuit court judgeships out of the total number of aspiring candidates who

registered. Therefore, there is a maximum of six candidates for each position. Public or private financing of election campaigns for any position within the Federal Judiciary is prohibited, as is the purchase of advertising space on radio, television or other media. Political parties and public officials may not campaign or take a position for or against a candidate. Campaigns start on April 1, 2025. Voting day is June 1, 2025.

Elected judges will serve a term of nine years and may be consecutively re-elected at the end of their term. Elections are for specific positions (e.g., civil trial court in the first judicial circuit), and judges may not be transferred outside the judicial circuit in which they were elected except for extraordinary reasons as determined by the Tribunal of Judicial Discipline. There are 32 judicial circuits in the country, by and large coincident with the geographical territory of the Mexican states (though each state also has a local judiciary, with trial and appellate state judges. Each state also has to popularly elect its judges, they can do it either in 2025 or in 2027. Nineteen states are also electing local judges on June 1, 2025).

The Tribunal of Judicial Discipline consists of five magistrates popularly elected. Each of the three selection committees nominates a list of ten candidates among those who registered to compete for this Tribunal. If there are more than 10 approved candidates then each committee randomly draws 10.

Anyone, including authorities, may file a complaint against a judge before with the Tribunal of Judicial Discipline. Decisions of the Tribunal could lead to the administrative or criminal liability of federal judges. The decisions of the Tribunal of Judicial Discipline can be appealed to an appeals' committee composed by a subset of magistrates of the same Tribunal. The Tribunal has the power to initiate investigations, claim jurisdiction over serious cases, impose precautionary and enforcement measures and punish judges who have committed "acts or omissions contrary to the law, the administration of justice, or principles of objectivity, impartiality, independence, professionalism, or excellence, as well as any other aspect established by law."⁶

⁶ Article 100, paragraph 4, of the Mexican Constitution.

III. IMPACT AND SCENARIOS

The Obrador-Sheinbaum judicial reform will profoundly transform the judicial career. The bifurcation into two different logics—one capacities-based and one electoral—changes the incentives for individuals entering the judiciary. The personal and relational qualities that lead to success in an electoral campaign differ significantly from those required to excel in an institutionalized assessment of competencies and skills. This problem is exacerbated by the fact that the requirements to become a candidate in the judicial elections do not include prior jurisprudential experience. As a result, it is possible to win an election without having the experience of drafting a judicial decision, arguing with other judges in a collegial court, or even basic knowledge of case law—elements that were key in the competitive examinations organized evaluation by the Federal Judicial Council.

With the 2024 reform, individual efforts to pursue training and specialization through continuous education lower ranks of the judicial career will lose their purpose. These positions have served as crucial steps towards acquiring the knowledge required for career advancement, to eventually compete in examinations to become a judge at the trial or appellate level. Not anymore: these top positions will go to whoever wins more votes. For this reason, this reform also encourages candidates for district and circuit courts to seek the support of political parties and, more broadly, from influential social or economic actors who can help them gain votes in election campaigns.

In order to be considered as a candidate for the election of judges, one must be nominated by the selection committees of the executive, legislative, and judicial branches. These selection committees, especially those of the elected branches, are dominated by the incumbent party MORENA who controls both branches with comfortable margins. On the other hand, the possibility of re-election will encourage judges to seek the favor of parties and powerful actors who are able to mobilize voters—possibly through their decisions which would undermine judicial independence. This support will be crucial to winning (re)elections because, as we have seen, candidates have no other means of attracting attention and lack public and private resources. Moreover, the fact that judicial elections are about specific positions in a specific area creates incentives for candidates to seek support from influential

local actors. These include not only political parties, but also local governments and important economic and social actors in the region. It is worth noting that organized crime is a very powerful force in large parts of the country and could become a decisive factor in judicial elections, as is already the case in other local elections.

Finally, the Tribunal of Judicial Discipline, which will review and evaluate both the administrative and substantive performance of judges, will also be composed of judges elected by popular vote for a six-year term without the possibility of re-election. This structure will lead to a convergence of criteria and priorities between them and the ruling party. Consequently, judicial reform creates strong incentives for judges to maintain closer ties with political and economic actors who have the power to mobilize voters to win elections and stay in office.

Discontinuity in judicial careers undermines the idea of advancement based on knowledge and competence for the roles of district judge and circuit judge. In this context, competition for judicial office becomes attractive to individuals who are party members or share the ideological preferences of the current government. In addition, the minimal requisites for aspiring to become a candidate in the judicial elections will attract lawyers who perceive the salary and working conditions as better than their current situation, and those who have no qualms about working in politicized courts under the oversight of the Tribunal of Judicial Discipline.

Unfortunately, legal education and the legal profession are poorly regulated in Mexico, which leads to significant differences in the training and knowledge of lawyers. Consider this: there are more than two thousand law schools in Mexico, compared to about two hundred and fifty in the United States and eighty in Germany. Many of these schools confer a law degree in just two years without rigorous academic standards (in Mexico the law degree is a college degree). In addition, after graduation lawyers are not required to pass a national exam to demonstrate a minimum degree of knowledge of the law or lawyering skills. Furthermore, membership in a bar association or professional organization is not mandatory, which undermines professional standards and protection against malpractice. As a result, many judicial positions will likely not be filled with the most capable lawyers who are truly

called to become judges, but by individuals who fulfill the minimal formal requirements and have the conditional support of powerful political or economic stakeholders.

The Mexican legal system is a long-standing and complex machine that is about to lose its operator. In some legal areas the hollowing out of jurisprudential experience will be extreme. For instance, in the courts specialized on economic competition or telecommunications it is entirely possible that someone with minimal knowledge of these highly complex issues wins the elections. Some have argued that clerks would be able to help the newly elected judges. This is contingent upon clerks who did not resign, and in some areas that ran on oral (not written) procedures (such as criminal or labor cases) clerks are not allowed to replace the judge during hearings.

The Obrador-Sheinbaum reform also entails greater risks of corruption in the judiciary and threats to the security of judges. The discontinuity of judicial career and the introduction of popular elections will turn judges into public figures in their communities, making them vulnerable to pressure from local political, economic, and criminal actors. This vulnerability, combined with the possibility that judges will remain in the same place until re-election and their need for support in mobilizing votes, will foster closer relationships with frequent litigants and powerful actors. As a result, conflicts of interest are likely to increase, and the neutrality, impartiality, and independence of the judiciary will be significantly undermined.

More generally, considering the nature and functioning of the political system, it is crucial to understand that what distinguishes the judiciary from other bureaucratic organizations or structures is its specialized knowledge of the law. This specialized knowledge allows disputes to be resolved in a consistent and coherent manner, i.e., deciding similar cases according to similar criteria and justifying deviations from precedent based on established principles and standards. The judicial career serves as a mechanism through which judges acquire, preserve, and pass on this legal knowledge and expertise. Moreover, judges see themselves as part of a branch of government with specialized knowledge and a unique function, which fosters a collective identity that gives meaning to institutional autonomy. This legal knowledge forms the basis for a judiciary that is separate from the other branches of

government and thus able to participate in the system of checks and balances, an idea recognized by classical thinkers such as Edward Coke, Montesquieu, and Alexander Hamilton.⁷

The reservoir of legal knowledge of judicial officials and judges in Mexico is likely to deteriorate as a result of the 2024 reform. The dismissal of all district and circuit judges and their replacement by elected individuals, diminishes the importance of legal knowledge and experience. To illustrate the loss of human capital that this reform entails: out of 771 positions for district judges and 927 positions for circuit judges—many of which were already vacant—333 district judges and 487 circuit judges have decided not to participate in the election, and a significant number, unknown to us at the time of writing, have retired or requested early retirement.

Ultimately, this radical reform also undermines the authority of statutes and case law as instruments for resolving conflicts in a consistent and coherent manner. The influx of inexperienced individuals, who lack a sense of belonging to a unique branch of government distinguished by its specialized knowledge, could deprive the judiciary of its accumulated expertise and erode its collective identity and autonomy. Consequently, the Obrador-Sheimbaum reform undermines the bedrock of the separation of powers and the judiciary's potential to play an important role in the system of checks and balances.

⁷ Edward Coke, "Dr. Bonham'S Case," in Steve Shepherd (ed.), *The Selected Writings and Speeches of Sir Edward Coke*, Indiana, Liberty Fund, 2003 [1644], vol. 1; Montesquieu, *Del Espíritu de las Leyes*, Mexico, Porrúa, 2024 [1748], book XI; Alexander Hamilton, John Jay, and James Madison, *El Federalista*, Mexico, Fondo de Cultura Económica, 2001 [1788], no. 78.

Chapter 6

The Other Side of the Reform: The New Discipline and the Same Administration of the Federal Judiciary

Alfonso Oñate Laborde¹

This analysis focuses on a comparison between the context that led to the creation of the Federal Judiciary Council in 1995 and the current environment in the eve of its replacement by two new and diverse bodies: the Judicial Disciplinary Tribunal and the Judicial Administration Body.

Over the past thirty years, the four reforms prompted by constitutional amendments in 1995, 1999, 2021, and the ongoing 2024 reform might suggest a continuous process of analysis, review, and correction of deficiencies identified during the time the previous reforms were in force. Nothing could be further from the truth. Each reform has been accompanied by extensive public outreach highlighting its foundational nature and dressing it up with the adjective “historic.”

¹ Member of the first Federal Judicial Council.

Strikingly, these judicial reforms from the past three decades have invariably set the goal of bringing justice closer to the people and addressing the serious dissatisfaction of the population with the administration of justice. The same mistake has been made this time and once again, this noble aim will not be achieved. Starting the judicial reform at the top of the Federal system instead of with State jurisdiction subsystems is not a good idea. These are not only the first points of contact for citizens seeking their grievances to be addressed. Those judiciaries also bear serious needs, and their Court Administration improvements, in most cases experience long delays when compared to the federal justice system. Equally important, is the oversight of the fact that the national justice system encompasses not only courts and tribunals, but also police corps and law enforcement institutions. These are not only more visible and exhibit more urgent problems to be addressed, but they are also the ones that inflict the greatest harm and offend the most on the population, thereby putting the rule of law at risk.

The launch of judicial reforms contrasts starkly with their eventual replacement or modification. Instead of presenting a diagnostic study highlighting shortcomings and proposing specific changes, the reforms return to similar objectives or reiterate those from the previous reform, albeit with changes that do not clearly demonstrate how they will achieve those aims.

An example of this is the division of the Federal Judiciary Council into two independent bodies, an aspect that has not received significant attention in the analyses and comments following the announcement of the judicial reform over the past year.

This is noteworthy for several reasons. Firstly, the extensive dissemination of the ongoing reform has focused on the fact that, for the first time in Mexican history, judges will be elected by direct, secret popular vote, supposedly granting them a new form of legitimacy in their role.

However, what has so far escaped public scrutiny is the fact that the only high-ranking members of the new Judiciary who will not be subject to this renewed legitimacy are those who will comprise the Judicial Administration Body. This peculiarity does not appear to be a mere oversight. The constitutional reform of September 15, 2024, included changes around that topic such as reducing the number of members, adjusting the length of their terms,

and modifying the appointment process: now, the Senate will appoint only one member instead of two.

This is just one of several cases where it is difficult to discern what the reform seeks to correct or the purpose behind some of the proposed changes. The explanatory statement, legislative committee reports, and scarce parliamentary deliberations fail to shed light on the more obscure aspects of the reform or clarify the specific goals behind certain modifications. In the case of changes to the new institutional design—particularly prior to their implementation—it is especially challenging to predict whether the upcoming changes will represent progress or regression.

In contrast, the 1995 reform explicitly highlighted the need to address the growing administrative agenda of a constantly expanding Federal Judiciary, with the aim of providing more timely responses to the population’s legal disputes. On the political stage, the end of the hegemonic political party was on the horizon. The emerging pluralism required more formal and predictable mechanisms to address and resolve conflicts and disputes between different levels of government, as these could no longer be settled within the bounds of partisan negotiation. Resolving such disputes necessitated a body that was detached from politics, positioned above the fray, and empowered to disregard political criteria and reasoning that had previously governed such matters.

It was within this context of democratic transition that the idea arose to create an adjudicative body that may eventually become a constitutional court. The decision was made to assign these new responsibilities to the Supreme Court, tasking it with addressing both constitutional controversies as well as judicial review—without relieving it of its responsibilities as the final appeal court.

This realignment required the creation of an institution distinct from and external to the Supreme Court within the institutional framework of the 1995 reform. This new body would manage the growing administrative workload of a judiciary that had to address the overwhelming judicial backlog—a persistent burden on the judiciary throughout the 20th century.

The design developed to address these dual demands—adjudicative and administrative—was to create an entity exclusively responsible for the governance, administration, and discipline of the Federal Judiciary, excluding the

Supreme Court, thereby reinforcing the separation between the two. During legislative deliberations, an element not included in the original proposal was introduced, which later became a source of friction between two institutions that, in other latitudes, often found themselves at odds: the body designed to focus exclusively on jurisdictional matters increasingly involved itself in administrative affairs, while the administrative body found itself entangled in internal disputes instead of concentrating on long-term planning that could have outlined a vision for the Federal Judiciary in the 21st century.

These unforeseen conflicts in the original reform were addressed in the 1999 amendment, which reinserted the Supreme Court into non-adjudicatory business, ranging from the appointment of Federal Judiciary Council members to the review of general agreements issued by the Council.

The administrative responsibilities of the President of the Supreme Court once again expanded, and in some cases, leaned toward centralization. This trend intensified with the 2020 constitutional reform, which favored centralized decision-making, consequently undermining the autonomy of judges.

That said, the 2024 reform shows sound judgment in distinguishing between the presidencies of the Supreme Court, the Judicial Administration Body, and the Judicial Disciplinary Tribunal. However, there is a discernible trend toward what could be termed the “Balkanization” of the Federal Judiciary—an evolution that poses serious risks to judicial independence by rendering it vulnerable not only to the other two branches of government but also to non-state power groups or diverse stakeholders.

Given this, the adopted solution remains unclear. Rather than strengthening the only administrative body—which now has the added responsibility of administering all federal courts, including the Supreme Court—it has been stripped of its disciplinary function, which is now assigned to a newly created tribunal responsible for both inspection and discipline.

A similar challenge arises in trying to understand why the number of members in the administrative body of the entire Federal Judiciary was reduced while its responsibilities increased. Administering the Electoral Tribunal and the Supreme Court is likely to pose complex challenges. These tasks include dismantling the existing administrative structures of both institutions while having only a few months to design new administrative frameworks for a

unified federal judiciary and to draft a consolidated budget, likely facing demands from both the disciplinary and electoral courts as well as the Supreme Court.

Paradoxically, this seemingly unplanned design may prove advantageous, as it is generally easier—especially at the outset—to build consensus and cohesion within smaller collegiate bodies. In this regard, requiring members of the Judicial Administration Body to be sworn in by their respective appointing authorities—the Plenary of the Supreme Court, the Plenary of the Senate, and the President of the Republic—appears to be an unwise decision. Although this act might seem merely ceremonial, it does little to enhance the appearance of autonomy that would be beneficial for carrying out their responsibilities.

Among the undeniable challenges the newly created body will face is the fact that its president will be chosen by ballot. While this mechanism may appear neutral at first glance, the experiences of the early days of the Federal Judiciary Council—when this method was used to appoint its first members on two separate occasions—revealed its limitations. That selection process only works if all candidates share equivalent qualifications. Thirty years ago, the Council underwent two different compositions in a single year and virtually lost its first year of operation due to this flawed method.

Certainly, it is a positive step that the law allows members of the Judicial Administration Body to have educational backgrounds, training, experience, and skills beyond those of a typical law graduate. Selecting individuals with diverse profiles will undoubtedly improve the administration of the Federal Judiciary. For this reason, it is perplexing that executive secretaries are still required to hold a law degree.

The workload awaiting the newly established administrative body—approving the entire regulatory framework for the new judiciary, along with strategies and protocols for recruitment, hiring, and training of new public servants, while simultaneously navigating an unfamiliar professional environment—demands that they avoid the ever-looming temptation of micro-management practices, especially in a work environment with which they may not be familiar.

The administrative challenges facing members of the new body require that they focus on medium-term public policy design. This includes developing a roadmap capable of equipping all federal tribunals and courts with adequate facilities, resources, and supplies. Judges should be able to devote themselves exclusively to the adjudicative function, which many are not well-versed in and for which they will require intensive and immediate tuition and training from the National School of Judicial Training.

A critical success factor for the Federal Judiciary will be the timely and proper coordination between the two bodies that, until this latest reform, operated within the same Judiciary Council. One of these bodies is tasked with judicial performance evaluation, while the other oversees the judicial career path, supervision of auxiliary bodies, and administrative matters of the entire Federal Judiciary—including the Supreme Court, which was previously excluded.

Intentionally, the previous paragraph points to the idea that one of the bodies should be oriented toward evaluating judicial performance, because without this focus, it is difficult to conduct thorough investigations or appropriate assessments of judicial conduct. The current approach seems to assume that the mere filing of a complaint is sufficient to trigger an investigation that may or may not result in a finding of liability for the accused officials.

However, the new Judicial Discipline Tribunal will face a more complex scenario. Over the past thirty years, it has become evident that many attorneys file administrative complaints against court officials merely as a strategy to increase their fees, making clients believe that a formal challenge is underway, without clarifying that—even if the complaint is successful—it will not necessarily lead to a favorable ruling.

It is important to note that nearly half of the federal courts operate under a collegiate structure, meaning that evaluating their performance requires an understanding of how three working teams function collectively. In such a scenario, determining, for instance, who among them is responsible for a procedural delay is, to say the least, complicated. This issue is especially critical considering recent constitutional reforms concerning delays in final resolutions of criminal and tax cases, which demand a much more rigorous and detailed review than simply checking whether a deadline was met.

Similarly, it is difficult to pinpoint a single official as responsible for a delay. The only way to uncover improper or even unlawful practices throughout the different stages of judicial proceedings is through a meticulous analysis of the performance of judicial bodies as a whole—rather than wrongly focusing solely on individual actors, an approach that often presumes misconduct by default.

When examining delays in a court of last resort, it is mistaken to assume that responsibility lies automatically with the final judge. Such assumptions could lead to undesirable outcomes, where the final tribunal, feeling pressured by allegations of missed deadlines, issues rulings without the rigorous analysis and deliberation expected of a court of last resort.

The 2024 judicial reform places the judicial performance evaluation body within the structure of the Judicial Discipline Tribunal. This assignment seems risky, as performance evaluation could easily devolve into inquisitorial practices, biased toward identifying misconduct, errors, or unlawful behavior.

The performance evaluation unit, conceived as part of the Judicial Discipline Tribunal, appears to follow the model of what was previously known as the Inspection Board, with its team of inspectors conducting either routine or extraordinary visits. Today, routine visits are no longer necessary; the relevant information can be extracted from the SISE (Judicial Statistical Information System), allowing for targeted requests for detailed additional or complementary information based on initial findings.

Only through this approach will the newly created tribunal be able to shed its image as an inquisitorial body seeking individuals to sanction to meet quotas. Furthermore, such visits impose a significant burden on judicial bodies, which are often forced to suspend their activities during inspections.

Even more concerning is the possibility that the Tribunal's actions might be perceived as latent threats capable of materializing at any moment. This would pose a serious risk to judicial independence and the autonomy of judges, exposing them to pressure and potential interference by external power groups. Such a dynamic could revive practices common during the era of a dominant political party.

Looking back at the accomplishments and shortcomings of the Federal Judiciary Council, among the former is the establishment of the judicial career path. Among the latter is its failure to create a proper civil service system.

To mitigate the potential storm that a new inquisitorial disciplinary regime with performance quotas might bring upon the judiciary, the best strategy would be to build upon the Judiciary's greatest achievement: the judicial career path. Newly elected judges without prior experience should be entrusted to those who have reached the threshold of becoming court judges through effort, study, and rigorous examination. These newcomers should understand that their electoral mandate is not only to hold office but to prepare themselves diligently, fully internalize the responsibilities of their new role, and face them alongside the teams they find at their courts or tribunals.

Those appointed as members of the Judicial Administration Body would do well to focus immediately on creating a true civil service system—still an outstanding objective after thirty years—while keeping their goals aligned with a medium-term horizon. This will enable them to design public policies aimed at developing a new, unified Federal Judiciary. Their foremost responsibility is to coordinate the functioning of all judicial bodies.

Chapter 7

The Replacement of Elected Judges

Sergio López Ayllón¹

The replacement of an elected judge poses a particular problem. Its legitimacy is based on the principle of popular representation, in which the mandate is given to a specific person by direct election. This personalization of the office raises the question of whether the electoral legitimacy of an elected judge can be transferred to a deputy in the event of a temporary or permanent absence.

Therefore, there is a tension between the need for continuity in the administration of justice and safeguarding the principle of popular election. Consequently, within a system such as the one established by the Obrador-Sheinbaum reform, certain questions inevitably arise: What principles guided the replacement of judges in a system such as the Mexican judicial reform? What values were considered, and how were the inevitable dilemmas resolved?

The experience of some countries, such as Argentina, has shown that the way in which the replacement of judges is handled can affect the independence of the judiciary and public confidence in the system. In this context, this analysis examines the rules for the replacement of judges introduced as part of the Mexican judicial reform and highlights their potential impact on the democratic legitimacy and stability of the judicial system.

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I. SUBROGATION AND REPLACEMENT OF JUDGES

A subrogate judge is a person who temporarily takes over the duties of a regular judge if the latter is absent for reasons such as vacations, illness, or other circumstances provided for by law.

Procedural and administrative rules generally govern the appointment of a surrogate judge. Thus, a subrogate judge may be a lower-ranking judge, a substitute judge or a professional judge who is authorized to temporarily perform the regular judge's duties.

The subrogate judge shall hold office for a limited period, as long as the authorized reason for the absence of the regular judge persists, or in cases where the regular judge cannot intervene in a case. The subrogate judge has the same judicial powers as the regular judge, is subject to specific appointment procedures established by law or internal court rules, and must adhere to the same standards of independence and impartiality.

The replacement of judges occurs when the regular judge can no longer perform his or her duties permanently for personal reasons (resignation, death, retirement, serious illness) or for institutional reasons (removal or disqualification). In such cases, the substitute judge must have the same qualifications and competencies as the regular judge. In countries where there is a judicial council or equivalent body, it is generally responsible for appointing subrogate judges or substitute judges.

The main objectives of subrogation or substitution are to ensure the continuity of ongoing proceedings, to enable litigants to resolve their matters in a timely manner, and to guarantee the independence and impartiality of the judiciary. For this reason, in some countries where the requirements, appointment procedures, or appointment bodies for subrogate judges differ from those for regular judges, serious concerns have been raised about their independence and impartiality.

In Argentina, for example, a bill was introduced to prohibit subrogate judges, appointed in proceedings without the participation of the Judicial Council, from presiding over cases in which public officials are accused of having committed crimes related to their function or committed in the protection of their position. One of the lawmakers who championed the bill stated, "Because of the manner of their appointment, subrogate judges do not

provide the safeguards that Article 114 of the national Constitution expressly provides: subrogate judges will never be able to dispel the suspicion that they are dependent on the ruling party and its specific interests.”²

II. THE REPLACEMENT OF JUDGES IN THE MEXICAN JUDICIAL REFORM

The Mexican judicial reform consists mainly of two measures that have already been analyzed in other chapters of this book:

- The removal of all judges and justices from the 33 branches of the country’s courts (both federal and state) and their replacement with newly elected judges by popular vote.
- The abolition of judicial councils, which are replaced by judicial administrative bodies and judicial disciplinary courts. The latter are given far-reaching powers to review and sanction judicial conduct.

Replacing an elected judge represents a difficult balance between ensuring judicial continuity and preserving democratic legitimacy. In principle, the replacement of an elected judge in the event of a permanent absence should take place through a new election procedure for the same position and the same judicial district. While this option ensures the renewal of the people’s mandate, it can be time and resource-consuming. In addition, calling extraordinary elections could lead to instability in the judicial system, especially if there are frequent or widespread vacancies.

An alternative approach is the election of substitute judges, who are elected at large to fill temporary or permanent vacancies in one or more judicial districts. This method provides more efficiency and predictability and allows for a smoother transition in cases where a judge or magistrate is absent. However, the design of the Mexican judicial reform, which mandates the election of judges and magistrates for certain specific functions and judicial districts, did not allow for this possibility.

² See “Óscar Aguad: no a los jueces subrogantes para juzgar a funcionarios públicos,” *Noticias Día x Día*, December 21, 2009, <https://noticiasdiadxdia.com.ar/noticias/val/3998/-oscar-aguad-no-a-los-jueces-subrogantes-para-juzgar-a-funcionarios-publicos-.html>.

The Obrador-Sheinbaum reform adopted an approach that clearly gives priority to the principle of direct elections. The Constitution Article 98, first paragraph, states that in the event of an absence of more than one month without leave or if the absence is due to death, resignation or any other reason for permanent separation, the vacancy shall be filled by the person of the same sex who received the second highest number of votes in the election for that position. The Constitution also states that “in the event of resignation or incapacity, the person who received the next highest number of votes shall take the position in order of precedence.”³

This solution poses several challenges, further complicated by the principle of literal and strict interpretation laid down in Article 11 of the transitional provisions of the reform decree.⁴ This principle limits the development of secondary regulations that could otherwise address the various problems identified.

First, the appointment of district judges, circuit judges, and collegiate appellate courts to nine-year terms and justices for twelve-year terms presents several challenges. It is unlikely that individuals who were second or third in line for election will still be available for office several years later, as their professional and personal circumstances may have changed significantly. This time gap can lead to uncertainty and affect the continuity of judicial appointments.

A second problem relates to the potentially negative impact of the ranking, particularly if it is taken to extremes, and those who received the lowest number of votes are selected. This could lead to people who have only received a minimal electoral mandate taking on the office of judge or public magistrate.

³ At this point, it is worth to pause and compare what happens within other branches of government. Regarding the head of the executive branch, the Constitution provides specific rules for replacing the president in case of absence. Article 84 of the Constitution establish that, in the event of the president's absolute absence during the first two years of their term, Congress must appoint an interim president by absolute majority vote and call for extraordinary elections to choose a new president. If the absence occurs within the last four years of the term, Congress must appoint, through the same procedure, a substitute president who will serve for the remainder of the term. Regarding senators and congressmen or congresswomen, Articles 51 and 57 of the Constitution establish that for each senator and congressmen or congresswomen a principal and an alternate shall be elected, with the alternate replacing the principal in cases of temporary or permanent absence.

⁴ This Transitional Article establishes: “For the interpretation and application of this Decree, all organs of the Mexican State and all judicial authorities shall adhere to its literal meaning, and no analogous or expansive interpretations shall be allowed that seek to disregard, suspend, modify, or render ineffective its terms or its legal force, whether in whole or in part.”

The question therefore arises as to whether someone with a small share of the electorate should hold an office of such importance and responsibility.

The third problem relates to the ambiguous drafting of the constitutional text. It is unclear whether the principle of precedence applies exclusively to individuals of the same gender, or if, on the contrary, this rule is only relevant for the second-ranked candidate, with gender becoming irrelevant for subsequent replacements. This interpretative gap may lead to legal and administrative disputes regarding the application of the rule.

Fourth, the proposed rule does not address what happens if all eligible candidates decline the position or are unavailable. This omission creates a regulatory vacuum that could paralyze the appointment process and lead to uncertainty in the operation of the judicial system.

Another problem: the provision does not specify how, by whom or when the replacement procedure is triggered, nor how to proceed in such cases. The new Organic Law for the Federal Judiciary (*Ley Orgánica del Poder Judicial de la Federación*, LOPJF), published in the Official Gazette of the Federation on December 20, 2024, merely reproduced the constitutional text and avoided addressing these issues, leaving a worrying regulatory gap.

Apart from the procedural concerns, the proposed reform formula raises further substantive issues. One major flaw is that it provides a mechanism for replacement in the event of permanent absence, but not for replacing judges or magistrates in the event of temporary absence. This loophole is particularly problematic, as both the constitutional text and court practice give rise to numerous scenarios for both temporary and permanent absences, including:

- Temporary leaves of absence of less than one month.
- Temporary leaves of one month to one year.
- Medical incapacity of more than one month.
- Recusal.⁵
- Suspension, disqualification, or dismissal by the judicial disciplinary court.

⁵ The recusal of a judge is a legal procedure through which one of the parties involved in a judicial proceeding, requests that a judge withdraw from the case because of a perceived reason affecting the judge's impartiality or independence in deciding the matter.

The new Organic Law for the Federal Judiciary regulates some of these issues. In other cases, however, it strictly adhered to the constitutional text without offering solutions for various substantive and procedural scenarios.

III. THE VARIOUS MODALITIES OF JUDICIAL REPLACEMENT

This section analyzes the various scenarios associated with the absence or vacancy of a judge, magistrate, or justice within the federal judiciary.

The absence of the President of the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*, SCJN) will be filled by the justice who received the second highest number of votes in the election, in accordance with current regulations. This person will assume the office of interim president. In the event of an absence of more than six months, the same justice will act as President for two years.

According to the constitutional text, a justice may request a leave of absence of less than one month from the SCJN plenary. If the leave of absence exceeds one month but is less than one year, it must be approved by the Senate of the Republic. There is no specific provision in the Constitution for substitution in these cases. This is reasonable, since the Court is composed of nine justices and can deliberate with a quorum of six judges, so that it can function normally even when one or two judges are on leave. In other words, the Constitution does not provide for the replacement of justices.

A similar framework applies to the members of the Disciplinary Tribunal and the Supreme Chamber of the Electoral Tribunal. In these cases, leaves of absence of less than one month are dealt with by the respective collegiate body, while leaves of absence of more than one month and up to one year must be approved by the Senate of the Republic. As with the Supreme Court, there are no special substitution rules, as the absence of a single member does not hinder the work of these bodies.

The rule changes in the case of district judges, circuit judges, and collegiate courts of appeal. In the absence of less than 15 days, a court clerk may deal with urgent procedural matters and issue preliminary rulings, although this does not constitute formal representation. If the absence lasts longer than 15 days but not longer than one month, the judicial administration body

appoints a replacement from a list of judicial officials authorized to perform judicial functions. In practice, these lists consist primarily of court clerks from district or regional courts. However, there is no legal restriction preventing the inclusion of other judicial officials, meaning that there is considerable discretion in this area.

In cases of recusal or disqualification of a judge or magistrate, they will be replaced for the specific case by a judicial official from the authorized list. The case is referred to the nearest collegiate court if two of three magistrates are recused or disqualified.

A significant problem arises when a district judge, circuit magistrate, or member of a collegiate appellate court requests a leave of absence from the Senate for more than one month and up to one year. In these circumstances, neither the Constitution nor the Organic Law of the Federal Judiciary provide for specific substitution rules, which creates a significant regulatory gap. As these courts operate either individually or in panels of three magistrates, the lack of a clear rule for the replacement could lead to institutional paralysis or severe operational disruption.

One possible solution is the application of Article 242 of the Organic Law of the Federal Judiciary, which states that in cases where a judicial official is absent for more than 15 days, the Judicial Administration Body shall appoint a temporary replacement from the list of authorized judicial officials who may perform judicial activities. Under a broad interpretation, judges and magistrates are considered judicial officials (civil servants), so this article could cover all scenarios.

However, this interpretation poses a challenge as other provisions explicitly regulate the substitution of judges and magistrates and only allow the appointment of substitutes for absences of more than 15 days but less than one month (Articles 26 and 41 of the Organic Law). In addition, the Judicial Administration Body is only authorized to approve lists of judicial officials eligible to perform judicial functions for a maximum of 30 days (Article 80, Section XXVIII). These provisions show that substitutes can only be appointed in these specific cases.

Furthermore, the terminology in Article 242, which refers to judicial officials in general, is problematic. In conjunction with Articles 246 to 248 of the

same law, it is unclear whether judges and magistrates fall within the scope of the concept of “judicial officials.” The Judicial Administration Body will likely appoint an authorized judicial official to perform judicial duties, but the lack of explicit regulation will undoubtedly lead to legal uncertainties and administrative challenges.

IV. REPLACEMENT DUE TO SUSPENSION BY THE JUDICIAL DISCIPLINARY TRIBUNAL

One of the central components of the Mexican judicial reform is the establishment of the Judicial Disciplinary Tribunal. This body, which consists of five members, is responsible for investigating, processing, and settling disciplinary proceedings relating to the administrative duties of judicial officials within the federal judiciary. It also has the task of evaluating and monitoring the performance of magistrates and judges.

Among other things, the court is authorized to temporarily suspend judges or magistrates to facilitate disciplinary investigations and proceedings. In addition, it may impose a suspension of up to one year on judges who fail to meet the extraordinary evaluation requirements set out in Article 171 of the Organic Law of the Federal Judiciary. The court is also authorized to suspend, disqualify, or dismiss judges or magistrates for misdemeanors.

However, a significant problem arises: neither the Constitution nor the Organic Law on the Federal Judiciary contains clear rules for replacing judges or magistrates in the event of suspension, disqualification, or removal. This loophole creates a large margin of discretion and raises critical questions. For example, at what stage of the proceedings should the final replacement of the head of a judicial body take place in the event of removal from office? What happens if the suspension is not final, but the judge or magistrate is unable to perform his or her duties due to the sanction imposed? Who replaces him if such a situation lasts longer than one month?

Similar questions arise regarding suspensions or removals from office that last longer than 30 days. Who has the authority to appoint a substitute judge or magistrate? What procedure should be followed and how long should the appointment last? And how can the chosen solution ensure compatibility with constitutional provisions and respect for the principles of legal

certainty and legality? This regulatory gap not only creates uncertainty, but also opens the door to discretionary decisions, which increases the risk of conflicts in application.

V. FINAL REFLECTION

The Obrador-Sheinbaum judicial reform, strongly influenced by a populist approach that equates democratic legitimacy exclusively with elections, has created serious problems regarding the conditions for replacing judges. The reform was drafted hastily and without a thorough analysis of the practical and legal implications of its provisions and demonstrates poor legislative technique, as it does not regulate situations that will inevitably arise in judicial practice. These regulatory gaps create opportunities for excesses and discretionary decisions.

The adverse effects of these shortcomings will ultimately be felt by citizens. Rather than ensuring the swift and efficient administration of justice, the judicial system risks significant delays in resolving cases and growing uncertainty regarding judges' impartiality.

Moreover, this problem goes beyond the federal judiciary and affects the 32 state judiciaries nationwide. Article 136 of the Mexican Constitution requires state governments to harmonize their local constitutions with the federal judicial framework. As a result, the challenges related to the replacement of judges and prosecutors will have a nationwide impact, further exacerbating the difficulties and conflicts that the reform will create throughout the Mexican judicial system.

Chapter 8

The End of General Effects in Mexico's Constitutional Justice

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Due to the structural nature and immense significance of several aspects contained in the Mexican judicial reform of 2024, the subject matter of this chapter has gone mostly unnoticed by the national and international public opinion. This is of particular concern, since it constitutes a setback in the scope of the protection of rights and, more generally, in the defense of the constitutional order in our country. This may be due, in a way, to the topic's relative complexity for a legal culture in which, for example, the media frequently report that someone “got an *amparo*,” when in reality they obtained the provisional or temporary injunction of an act of authority.

Therefore, it is necessary to begin by briefly reviewing the specific amendments in question. First, the Constitution was modified to add a final paragraph to Article 105, which now states the following: “In the case of constitutional controversies or actions of unconstitutionality regarding general norms, their admission shall in no case lead to the injunction of the challenged norm.” In fact, these rules were already provided for in the corresponding law, and they

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have now been elevated to constitutional status to prevent the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*, SCJN) from suspending the application of general norms under the justification of serving some higher constitutional purpose.

Basically, constitutional controversies are legal proceedings in which the Supreme Court of Justice of the Nation resolves a conflict of authority between various bodies of the Mexican State, for example, between the head of the executive branch and the Chamber of Deputies regarding the possibility of vetoing the annual federal budget. On the other hand, in constitutional challenges, certain organisms established in a predetermined list are authorized to raise before the Supreme Court of Justice of the Nation the possible contradiction between a general norm and the Constitution; for example, the National Commission for Human Rights (*Comisión Nacional de los Derechos Humanos*, CNDH) regarding federal or local laws, or international treaties that violate constitutional rights. What is relevant, though, is that the possibility of suspending the challenged general norms has been prohibited under any circumstances in both proceedings.

Something similar occurred with the other mechanism of constitutional control *par excellence* in Mexico's legal system: the *amparo* lawsuit. Sections II and X of Article 107 of the Constitution were amended to establish that, in *amparo* lawsuits resolving the unconstitutionality of general norms, the rulings issued shall not have general effects, nor may an injunction be granted with such scope.

Through the *amparo* lawsuit, any person entitled to an individual or collective right or interest can seek the protection of the federal judiciary branch against general norms, acts, or omissions of an authority that violate human rights recognized by the Constitution and the guarantees established for their protection. Most of the times, it is essential for people who seek the *amparo* protection to be able to obtain an injunction of the challenged act, that is, to prevent its application or consummation, until the merits of the case are resolved, when the nature of the act allows it and after a weighted analysis by the judge of the appearance of good legal standing and the social interest.

Since the lawyer and politician Mariano Otero conceived the *amparo* lawsuit in its original design in the mid-19th century, the rulings issued in these trials would only concern the complainants who requested protection, limiting such to shield them, if applicable, in the specific case on which the petition is based. Therefore, the *amparo* could only be granted for the purpose of restoring the violated rights of the complainants. This principle of relativity of *amparo* rulings—also known as the “Otero formula”—finds its ideological basis in the individualistic conception inherent to classical liberal thought, predominant 150 years ago.

However, the constitutional reforms of 2011, which included the expansion of legitimate interests and the possibility of using such to defend collective rights, i.e., those corresponding to a diffuse collective, have made necessary a modulation of the relativity principle. This happened through a gradual jurisprudential development over the past decade, from which certain criteria published in 2018 stand out.

On one hand, with justice Arturo Zaldívar heading the case, the First Chamber of the Supreme Court of Justice of the Nation recognized in *amparo* lawsuit 1359/2015 the need to reinterpret the relativity principle: “Thus, the *amparo* lawsuit, which was originally conceived to protect strictly individual and exclusive rights, can now also be used to protect rights with a more complex nature. For this reason, the First Chamber has recently recognized the need to reinterpret the relativity principle.”²

Likewise, in the thesis titled “*Amparo* rulings. The relativity principle allows for modulations when complainants have a collective legitimate interest,” derived from *amparo* lawsuit 241/2018, the Second Chamber of the Supreme Court of Justice of the Nation noted that “if in collective or legitimate interests the impact transcends the subjective or individual legal sphere of the person who filed the *amparo* lawsuit, it would be inadmissible to suppose that the mechanism of constitutional control is denied on that basis, using as an excuse the violation of the principle of relativity of rulings.”³

² Thesis 1a. XXI/2018, *Semanario Judicial de la Federación*, Tenth Series, vol. I, March 2018, p. 1011. Editor’s note: The *Semanario Judicial de la Federación* (sometimes translated as “Federal Judicial Weekly”) is the official publication through which binding and relevant decisions issued by the competent bodies of the Federal Judiciary are disseminated. See: SCJN, “*Semanario Judicial de la Federación*,” <https://sjf2.scjn.gob.mx/>.

³ Thesis 2a. LXXXIV/2018, *Semanario Judicial de la Federación*, Tenth Period, vol. I, September 2018, p. 1217.

Particularly noteworthy for its explicitness in environmental matters is the decision of the First Chamber in *amparo* lawsuit 307/2016: “[...] [T]he special configuration of the right to a healthy environment requires the flexibilization of the different principles of the *amparo* lawsuit, including the determination of its effects. [...] [I]t is necessary to reinterpret the principle of relativity of rulings to provide it with content that allows the effective protection of the right to a healthy environment, based on the recognition of its collective and diffuse nature. [...] [I]ts interaction must be harmonious, meaning that the relativity of rulings cannot constitute an obstacle to the effective protection of the environment.”⁴

In the same sense, in *amparo* lawsuit 610/2019, the Second Chamber faced the analysis of the constitutionality of certain amendments to the Official Mexican Standard (*Norma Oficial Mexicana*, NOM) on the quality of refined oil products and ordered the Energy Regulatory Commission to deprive them of their effects. The chamber held that the complainant was defending a legitimate interest of an abstract nature, which is important for the community beyond the legal sphere of the complainant itself. Thus, the effects of the constitutional protection cannot refer only to the affected party, since what is at stake is a legal good that goes beyond the individualistic logic, which belongs to a group and is indivisible: the environment.⁵

More recently, the First Chamber revisited this type of argumentation and notably strengthened it in *amparo* lawsuit 79/2023, in which four civil associations challenged certain articles of the Criminal Code for the state of Aguascalientes regarding abortion. On that occasion, the chamber stated that, considering the principles of *pro persona*, effective judicial protection, and constitutional supremacy, the effect of the ruling should be in accordance with the collective legitimate interest with which the complainants filed their *amparo* lawsuit. Therefore, the effect of the *amparo* could not be limited to preventing the challenged criminal norms from being imposed on the complaining associations or their members; but should be extended to order the

⁴ Thesis 1a. CCXCIV/2018, *Semanario Judicial de la Federación*, Tenth Period, vol. I, December 2018, p. 397.

⁵ Cf. Supreme Court of Justice of the Nation, *Extracto del Amparo en Revisión 610/2019*, Mexico, Centro de Estudios Constitucionales, <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/resumen/2022-02/Resumen%20AR%20610%202019%20DGDH.pdf>.

local Congress to repeal the articles declared unconstitutional. “Only in this way, through the tool of a broad concession, can the rights of women and people with the capacity to gestate to reproductive health, equality, and non-discrimination, which are collectively violated, be adequately protected.”⁶

The jurisprudential development described thus far arose from the need to provide effective protection for collective rights, particularly the right to a healthy environment. In the Aguascalientes abortion case, the Supreme Court of Justice of the Nation chose to provide prompt and broad constitutional protection to the individual rights to reproductive health, equality, and non-discrimination, which were “collectively” violated by the challenged criminal norms.

However, there were other cases of exception to principle of relativity of *amparo* rulings, including decisions granting injunctions, which specially irritated the government of President López Obrador, and at the end motivated to include this aspect in the judicial reform. These were energy-sector matters in which the constitutional principle of free competition—and the rights derived from it—were at stake, in the face of a series of measures designed to favor the State-owned productive enterprises: *Petróleos Mexicanos* (PEMEX, the national oil company) and the *Comisión Federal de Electricidad* (CFE, the national electricity utility), in their respective markets of hydrocarbons and electricity.

Indeed, in December 2020, a resolution was published in the Official Journal of the Federation, establishing the goods whose import or export is subject to regulation by the Department of Energy, which, among other things, complicated the granting of permits for the importation of refined oil products. In *amparo* lawsuit 16/2021, the Second District Court Specialized in Economic Competition granted an injunction with general effects against such administrative resolution, “since granting a precautionary measure with concrete effects for the complainant, [...] would not only give a competitive advantage over other participants in the sector (of commercialization of refined oil products), but could also cause distortions in such market, affecting competition and development [...]”⁷ The district court considered that the principle of

⁶ P. 152, paragraph 335.

⁷ Public version of interlocutory ruling, p. 37.

relativity of rulings should be adjusted in the specific case to “comply with the ultimate objective of the Constitution, that is, to allow greater participation of economic agents in order to achieve the efficient development of the markets and the general population in a collective dimension.”⁸

Likewise, in March 2021, certain amendments to the Electricity Industry Law were published, which sought to prioritize *Comisión Federal de Electricidad*'s firm generation over private renewable power plants in the dispatch of electricity. Dozens of companies developing or operating power plants filed *amparo* lawsuits against these amendments. At the time, in *amparo* lawsuit 118/2021, the same district court also granted an injunction with general effects considering that “granting a precautionary measure with particular effects, that is, only for the complainants, [...] would not only give them a competitive advantage over other participants in the same position, but could also cause distortions in the electricity industry, affecting competition and the development of the sector [...]” With the rights to competition and free concurrence at stake, both in an individual and collective dimension, a general precautionary measure was necessary to avoid causing the “adverse effects that it seeks to prevent [...], that is, to favor one participant in the electricity industry over its competitors, to the detriment of the latter and, mainly, of the end users.” According to the court’s argumentation, this did not violate the principle of relativity of rulings, but only modulated it, despite that the effects covered all the participants of the wholesale electricity market and other entities engaged in regulated activities in the electricity sector or even those in the process of entering such.

The first part of the argument in the two previous cases would seem to be a mere reiteration of the criticism of the principle of relativity for leaving those who have not resorted to *amparo* at a disadvantage. The second part is more interesting and provocative and has to do with an economic conception of the rights of consumers or end users of refined oil products or electricity, as a function of the conditions of competition in the respective markets.

After all this, in February 2024, Mexico’s President submitted numerous initiatives to amend the Mexican Constitution, including the judicial reform subject of this book. On that occasion, the president accused the

⁸ Public version of interlocutory ruling, p. 38.

Supreme Court of Justice of the Nation and some judges of improperly setting themselves up as legislative bodies by having adopted criteria contrary to the principle of relativity in *amparo* lawsuits, and even in actions and controversies, granting injunctions with general effects regarding laws of the federal Congress.

President López Obrador acknowledged in his initiative⁹ that the jurisprudential trend referred to has a “logic of protection of rights with a collective or diffuse dimension,” but he limited himself to state that it has been “poorly uniform, contradictory, and even discretionary,” without analyzing the nature of the rights that had been protected and without explaining the reasons for the lack of uniformity, contradiction or discretion. Nevertheless, the president argued a “serious interference with the constitutional powers of the federal Congress and a clear violation of the principle of checks and balances.”

López Obrador openly proposed (and succeeded) to “rescue and anchor” the “Otero formula” so that in no case may rulings with general effects be issued in *amparo* lawsuits, to the point of including those granting injunctions, in addition to reiterating that injunctions will not proceed in constitutional controversies and constitutional challenges concerning general norms.

One of the most relevant consequences derived from this change is that it has closed the opportunity for the development of a line of case law that could have been decisive for the protection of human rights, especially collective rights. If the executive and the legislative branches found out excesses in the definition of certain rights as “collective” or for any other reason—which, of course, could not be ruled out—the institutional framework itself was available to correct them through the available means of appeal and the system of liabilities of jurisdictional public servants.

Now, to fully understand the implications of the amendments discussed herein, a hypothetical exercise can be carried out on how challenges against the changes to the Electricity Industry Law would be analyzed, both by private

⁹ See pp. 34 to 38 of the “Bill by the Federal Executive with a Draft Decree to Amend, Add, and Repeal Various Provisions of the Political Constitution of the United Mexican States Regarding Judicial Reform,” *Parliamentary Gazette*, year XXVII, no. 6457-15, February 5, 2024 (“*Iniciativa del Ejecutivo Federal con proyecto de decreto, por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de reforma del Poder Judicial*,” *Gaceta Parlamentaria*, año XXVII, núm. 6457-15).

companies with a legal interest and by environmental organizations. In the first case, private companies might not have been in a position to obtain an effective precautionary measure, because it would be technically difficult to apply an economic order of electricity dispatch for whoever obtained the injunction, with Federal Electricity Commission's power plants coming next in line, and finally dispatching any "clean sources" that had not obtained an injunction.

Under the second scenario, the amendments addressed in this chapter are clearly detrimental to climate and, in general, environmental judicial action, which was being used to challenge general norms that violated the right to a healthy environment, combined with the procedural strategy of the legitimate interest defended by environmental organizations. In this case, the possible violation was produced by the high possibility that implementing the electricity amendments would maximize power generation in the Mexican energy mix, deploying fuel oil with high sulfur content. In future and similar cases, it will be impossible to suspend with general effects a legislation that would cause potential irreversible damage to the environment and human health, eroding the precautionary principle applicable in this matter.

The constitutional changes evidenced a clear shift towards deference to the representative branches, legislative and executive, limiting the authority of judges to halt general norms that may violate fundamental rights, with implications in the systems of checks and balances. This situation not only favors congresses and administrative bodies that issue regulations but also reinforces the historical trend in which access to constitutional justice is reserved for those who have sufficient resources to litigate an *amparo* lawsuit. Thus, the alleged respect for the "popular will" placed before the rights of vulnerable groups becomes paradoxically elitist and disempowers those who lack the economic capacity to bring their claims before the courts.

Despite this setback, in addition to the radical restructuring that the federal judiciary is undergoing, it is important to explore alternatives to mitigate the restrictions to the general effects of *amparo* rulings, including injunctions. Thus, for example, we should push for agility in the system of case law by reiteration established by the Collegiate Circuit Courts, or by precedents established by the Supreme Court of Justice of the Nation, so that a general norm that has been declared unconstitutional could be

removed promptly from the legal framework through a general declaration of unconstitutionality.

In conclusion, the analyzed amendments mark a turning point in the access to constitutional justice and in the protection of human rights, especially those of a collective nature, and especially in the environmental field. It also opens the door for the consolidation of an even more exclusive legal system, where only those actors with resources can benefit from constitutional justice. Finally, it weakens the means of constitutional control and distances Mexico even further, if possible, from the ideal of a constitutional and democratic rule of law.

Chapter 9

Constitutional Justice Adrift: The Elimination of the Chambers of the Supreme Court

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I. THE JUDICIAL REFORM AND THE CHAMBERS OF THE SUPREME COURT

For anyone unfamiliar with the workings of the Mexican Supreme Court (*Suprema Corte de Justicia de la Nación*, SCJN), it would be easy to conclude that it always operated in the same way: eleven robed individuals sitting at a horseshoe table while deliberating on legal questions. This image, however, only tells part of the story. In fact, the SCJN's operational design functioned based on three distinct bodies: the *Pleno* (i.e., sitting *en banc*) and two Chambers (i.e., two five-judge panels), the First and the Second Chamber. Although all three bodies adjudicated cases, the types of cases they analyzed, their rules of operation and their impact on the legal order were different.

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The workings of the *Pleno* coincide with the image outlined above: the eleven members of the SCJN meet three times a week and largely focuses on the adjudication of cases brought in abstract review through *acciones de inconstitucionalidad* (when it is considered that a piece of legislation, in whole or in part violates human rights), and those brought through *controversias constitucionales* (i.e., the competence allocation mechanism), when it is considered that there has been a competence encroachment in violation of the system of separation of powers or the federal system. In this way, it can be said that, when sitting en banc, the SCJN largely focuses on the analysis of legal problems that have a global impact on the Mexican legal system.

The Chambers, were panels composed of five justices each, met once a week and mainly heard *amparo* proceedings (i.e., individual constitutional complaints) according to their area of specialization. The First Chamber dealt with civil and criminal matters, while the Second Chamber dealt with administrative and labor matters.³ Therefore, it can be said that, as opposed to the *Pleno*, the Chambers focused on adjudicating matters based on specific issues brought by citizens.

Among the constitutional changes brought by the Obrador-Sheinbaum judicial reform, was the elimination of the two Chambers of the Supreme Court from the moment of its enactment—that is, September 15, 2024. However, by means of a resolution (*acuerdo*) issued by the *Pleno*, it was determined that the Chambers would continue to operate until the nine justices elected by popular vote in June 2025 take office.⁴ This means that the impact of the elimination of the Chambers will not be felt until the new Court begins to operate in September 2025. Nonetheless, the purpose of this article is, on the one hand, to briefly explain the relevance of the Chambers of the SCJN in Mexico’s constitutional justice system. And, on the other hand, to explore the possible consequences of the elimination of the two Chambers and to draw the implications of such a decision for the administration of justice in Mexico.

³ *Acuerdo General 1/2023* (General Agreement No. 1/2023), April 19, 2023. In fact, the distribution of case was more complex than that: due to the work overload regarding tax law related cases that the Supreme Court handled before 2006, it was decided that administrative law related cases were divided between the two Chambers in order to balance the work overload of these two panels and to accelerate the adjudication of the cases.

⁴ The *Pleno* did not issue a formal document reflecting this decision; however, in some sessions the ministers have referred to an agreement in this regard adopted in a private session.

II. WHAT DID THE CHAMBERS DO AND WHAT WAS THEIR IMPORTANCE?

The SCJN is an atypical constitutional court for several reasons. One is the large number of matters it receives and adjudicates. In 2024, it received 16,066 cases; of these, 3,853 were allocated among the justices for assessment and opinion drafting.⁵ In that same year, it adjudicated 4,317 cases: 479 by the *Pleno*, in 150 sessions; 1,868, by the First Chamber; and 2,009, by the Second Chamber, both in only 37 sessions.⁶

The asymmetry in the number of cases adjudicated and sessions held by the Chambers *vis-à-vis* the numbers of the *Pleno* is largely explained by two reasons. The first has to do with the specialization mentioned above; that is to say, concentrating matters thematically among certain justices allows for greater speed in their resolution. The second is related to the conditions of deliberation. Plenary sessions are televised, and opinion drafts are analyzed section by section. By contrast, the Chambers adjudicate between forty to seventy cases (in exceptional cases) in one session. Deliberations in the Chambers, in this context, are not detailed or mediatic. Instead, during deliberations, the justices focus on a handful of cases that have been subject of written feedback and exchanges between law clerk teams. What is more, most cases are decided *en bloc* (after having been analyzed by their respective teams). In this way, it could be said that the substantive deliberation of the legal issues adjudicated by the Chambers used to take place in written form, while that of the *Pleno* is oral, with the additional implications that the public exposure entails.

One of the virtues of how the *Pleno* operates is that the oral and public deliberation of constitutional questions fulfills a pedagogical and transparency function. As noted, the sessions are public and broadcast on television. Additionally, stenographic records of the sessions are also made publicly available on the Court's website.⁷ Even though it is true that compared to

⁵ The variance is explained by the fact that many cases are not allocated because they do not meet the relevant procedural requirements or because they are referred to the *Plenos Regionales* or *Tribunales Colegiados de Circuito* (courts of appeal), according to the relevant resolutions issued by the *Pleno*.

⁶ SCJN, *Informe Anual de Labores del Poder Judicial de la Federación 2024*, Mexico, 2024, pp. 29-30, <https://www.scjn.gob.mx/informedelabores/pjfi/pdf/informe-anual-de-labores-2024.pdf#page=13.25>.

⁷ See SCJN, "Versiones Taquigráficas" (*Shorthand Versions*), <https://www.scjn.gob.mx/multimedia/versiones-taquigraficas>.

most constitutional courts around the world (with some exceptions like that of Brazil), TV broadcast of court proceedings is still not the norm, and taking into account the costs in terms of deliberative quality, it is also true that such an operation allows for a better understanding of cases—for instance, it is helpful to distinguish the arguments of the members of the Supreme Court. This, on the contrary, does not happen in the context of the operation of the Chambers. On the one hand, the written exchanges among teams are never public; and, on the other hand, the sessions (i.e., the broadcasting and stenographic records) only show the vote en bloc of the cases—that is, there is no deliberation whatsoever. In the best-case scenario, if one wished to understand the position of a certain Justice on a matter, one should have to wait until the relevant Justice writes a dissenting or a minority opinion, which is not always the case and, in some cases, may take weeks or months.

By the same token, the lack of detailed deliberation in the Chambers makes it possible to adjudicate a large number of cases, but also to generate *tesis aisladas* and *tesis de jurisprudencia*—i.e., excerpts of sorts of the relevant parts of Supreme Court decisions that either serve as guides for lower court judges in their rulings (*tesis aisladas*) or bind lower courts (*tesis de jurisprudencia*). This function is important for the substantive harmonization of the administration of justice and is also essential to make it more efficient. Table 1 shows the importance of the Chambers in this regard: 85.62 % of *tesis aisladas* and *tesis de jurisprudencia* recorded in the *Semanario Judicial de la Federación*⁸ since the enactment of the 1917 Constitution have been generated by the Chambers, while only 14.37 % have been generated by the *Pleno*.

⁸ Editor's note: The *Semanario Judicial de la Federación* (sometimes translated as "Federal Judicial Weekly") is the official publication through which binding and relevant decisions issued by the competent bodies of the Federal Judiciary are disseminated. See: SCJN, "Semanario Judicial de la Federación," <https://sjf2.scjn.gob.mx/>.

TABLE 1

Tesis aisladas and jurisprudencia of the Mexican Supreme Court in the Semanario Judicial de la Federación since 1917⁹

Época (Period)	Pleno	First Chamber	Second Chamber	Third Chamber	Fourth Chamber	Auxiliary Chamber	Total
11a.	48	813	386	-	-	-	1,247
10a.	678	3,731	2,609	-	-	-	7,018
9a.	3,356	3,483	4,869	-	-	-	11,708
8a.	751	230	247	1,155	404	21	2,808
7a.	1,959	3,093	2,467	3,185	2,515	1,462	14,681
6a.	1,604	7,034	4,859	4,385	5,384	-	23,266
5a.	16,292	26,400	22,757	24,165	18,692	2,646	110,952
Total	24,688	44,784	38,194	32,890	26,995	4,129	171,680

III. CONSTITUTIONAL JUSTICE WITHOUT THE CHAMBERS OF THE SUPREME COURT

The central question that emerges from the elimination of the Chambers is: what will happen to the large number of cases they used to decide? And, consequently, what impact will the redistribution of these cases have on the system of constitutional justice? Before offering an answer, it is essential to recall that prior to this judicial reform, the Constitution empowered the Supreme Court to adopt *acuerdos generales* (i.e., resolutions concerning the administration of its docket) through which the cases in the docket were distributed among the Chambers, *Plenos Regionales*,¹⁰ and *Tribunales Colegiados de Circuito* (courts of appeal).¹¹

⁹ Prepared by the authors working with data available in the *Semanario Judicial de la Federación*, as of 24 January 2025.

¹⁰ Editor's note: The *Plenos Regionales* are bodies of the Federal Judiciary composed of three *magistradas o magistrados de circuito* (federal circuit judges). Their primary function is to resolve "conflicting rulings," i.e., situations in which two or more *Tribunales Colegiados de Circuito* (federal circuit courts) within the same region reach different conclusions on the same legal issue in *amparo* proceedings. See: Constitution of 1917, Article 107, Section XIII; and Organic Law of the Federal Judiciary (*Ley Orgánica del Poder Judicial de la Federación*, LOPJF), Article 38.

¹¹ Constitution of 1917, Article 94, ninth paragraph, in force as of September 14, 2024.

Exercising this authority, the *Pleno* issued several *acuerdos* to distribute cases under its original jurisdiction.¹² The most recent of these¹³ specifies which cases are retained by the *Pleno* (such as *acciones de inconstitucionalidad*, except those to be dismissed, and *controversias constitucionales* involving general norms); those to be assigned to the Chambers (residually allocated based on those within the SCJN’s jurisdiction that are neither retained by the *Pleno* nor referred to *Tribunales Colegiados de Circuito*; and those that are to be referred to *Tribunales Colegiados de Circuito*. The agreement also sets forth the criteria based on which the SCJN may reassume original jurisdiction over cases previously delegated.

In light of the elimination of the Chambers, the new Organic Law for the Federal Judiciary (*Ley Orgánica del Poder Judicial de la Federación*, LOPJF)¹⁴ (i.e., the statute that deals with organizational and competence aspects of the bodies comprising the judiciary) deleted all references to them, but did not modify the types of cases that fall under the SCJN’s jurisdiction—now to be handled exclusively by the *Pleno*.¹⁵ Upon reviewing the constitutional and legal texts after the reform, there is no clear answer as to how the cases previously assigned to the Chambers will now be processed. Nonetheless, several possible scenarios can be identified.

The first scenario is that the *Pleno* absorbs all the cases processed annually by the SCJN. This would mean that it would need to resolve around 4,000 cases each year. Assuming it continues to meet three times a week, this would entail resolving about 27 cases per session. Beyond the complexity of handling such a high volume of cases, it is worth noting that this workload would be managed with fewer human resources. The SCJN will now consist of only nine justices, and likely only eight of them will prepare draft rulings, since the Chief Justice typically does not prepare draft rulings due to the administrative burden of the position.¹⁶

¹² See, among others, *Acuerdos Generales* (General Agreements) 5/2001, June 21, 2001; 8/2003, March 31, 2003; 3/2008, February 3, 2003; 12/2009, November 23, 2009; 11/2010, August 17, 2010; 5/2013, May 13, 2013 and 1/2023.

¹³ *Acuerdo General* 1/2023, January 26, 2023.

¹⁴ *Diario Oficial de la Federación* (Official Gazette of the Federation), December 20, 2024.

¹⁵ Article 16, *Ley Orgánica del Poder Judicial de la Federación*, as amended, *Diario Oficial de la Federación*, December 20, 2024.

¹⁶ Additionally, there is uncertainty as to whether the working teams of the two justices who will no longer be part of the Court (the so-called *ponencias*) will be absorbed by the remaining justices or whether those positions will be eliminated.

This scenario would significantly affect the deliberation process. The SCJN would likely be forced to adopt the working method previously used by the Chambers, to the detriment of detailed analysis and open deliberation of each case by the justices.

Another possibility, still assuming the SCJN chooses to handle the same volume of cases and remains committed to transparency and deliberation, is that it continues its current working model, in which cases are publicly discussed in detail. However, if no changes are made to its internal procedures, it would be practically impossible for the Court to handle the number of cases it handles today. For example, in 2024, the *Pleno* decided on an average of three cases per session. Since each session usually lasts three hours¹⁷ at most,¹⁸ in order to handle the same 4,000 cases with the same deliberative model, the *Pleno* would need approximately 1,300 sessions. That means more than three years of daily sessions, including weekends, just to process the current yearly caseload.

At this point, it is worth remembering that one of the main reasons given to justify the Obrador-Sheinbaum judicial reform was that the administration of justice is too slow. For that reason, the constitutional text now includes maximum timeframes for courts to decide certain types of cases.¹⁹ Under this scenario, the goal of expedited justice would not be met: increasing the number of cases handled per day or by extending deliberation times as described above is unrealistic, and that is without accounting for the significant strain this would put on the justices and their teams.

Another possibility is that SCJN chooses to expand the types of cases it refers to the *Tribunales Colegiados de Circuito* and *Plenos Regionales*. That is, given the impossibility of resolving the same number of cases without the

¹⁷ According to the Rules of Procedure of the Supreme Court, sessions are to begin at 11:00 a.m. However, in practice, they usually start after 11:30 a.m., and sometimes later when the justices hold private meetings to address administrative matters, for example. Although it is foreseeable that the discussion of non-jurisdictional matters will decrease due to the recent creation of the administrative entity, the current discussion schedule would still be insufficient to maintain the current workload.

¹⁸ It is customary for sessions to adjourn at 2:00 p.m. On exceptional occasions, the Supreme Court has decided to continue the analysis of a matter beyond the time established in the Rules of Procedure, until its conclusion. This occurred, for example, during the discussion the *acción de inconstitucionalidad* 64/2021, related to the *Ley de Industria Eléctrica* (Law of the Electric Industry) and also in the discussion of the *acción de inconstitucionalidad* 164/2024 regarding the constitutional reform of the judiciary.

¹⁹ Constitution of 1917, Article 17, second paragraph, as amended, *Diario Oficial de la Federación*, September 15, 2024.

Chambers, the Court could focus only on certain type of cases and delegate the rest. After all, the reform left the Court’s constitutional power to refer cases to lower courts untouched.²⁰

Although this approach is constitutionally viable, it is not without its problems. First, reducing the workload is difficult because neither the Constitution nor the law modified the SCJN’s jurisdiction. In fact, the new Organic Law for the Federal Judiciary essentially mirrors the previous one in terms of the matters assigned to the constitutional court.²¹

A second issue is that delegating additional cases would create new challenges. By constitutional design, some matters cannot be delegated—for example, *controversias constitucionales*, *acciones de inconstitucionalidad*, *declaraciones generales de inconstitucionalidad* (general declaration of unconstitutionality in *amparo*), *revisión constitucional de las consultas populares* (ex-ante review of citizen referendums), and declarations issued by the Federal Executive during suspensions of constitutional rights. These procedures belong to the SCJN in original jurisdiction because of its relationship with other branches of government, as the constitutional court and the highest decision-making body in the Federal Judiciary.

A second group of cases is also non-delegable, either because they involve internal review processes within the SCJN—such as justices’ recusals, excuses from duty, and impediments, or appeals against procedural decisions by the Chief Justice—or because they involve jurisdictional disputes among lower courts that require resolution by a higher court, such as splits of authority among *Plenos Regionales*. In any event, this universe of cases is not large enough to meaningfully reduce the SCJN’s workload.

The types of cases that could significantly reduce the workload, if delegated to *Plenos Regionales* or *Tribunales Colegiados de Circuito* are appeals filed in *amparo* proceedings (i.e., *amparos directos en revisión* and *amparos en revisión*). But even this option presents its own difficulties.

²⁰ “[...] issue resolutions to ensure an adequate distribution of cases within the jurisdiction of the Court, as well as referring matters to *Plenos Regionales* or *Tribunales Colegiados de Circuito*, in order to expedite their processing,” Constitution of 1917, Article 94, ninth paragraph, as amended, *Diario Oficial de la Federación*, September 15, 2024.

²¹ The substantive changes are only two: the Supreme Court’s jurisdiction to hear appeals against the Labor Conflicts Commission of the Federal Judiciary was eliminated, and the Supreme Court was empowered to resolve splits (*contradicciones de criterios*) between *Plenos Regionales*.

For *amparos directos en revisión*, although they make up the bulk of the SCJN’s docket,²² it is important to recall that the existence of this mechanism has long been controversial. Historically, many have questioned the very idea of allowing the review of state courts’ judgments by federal courts, as it effectively subordinates them to the federal level. As a result, the appeal in *amparo directo* is considered truly exceptional. As such it is not a right that parties may claim. Instead, it is a discretionary power of the constitutional court based on which it may decide to hear only those cases that may establish an important precedent.²³ Therefore, given the logic behind this type of appeals, it would be inconsistent for the SCJN to declare a case exceptional, only to delegate its resolution to any of the lower courts (specifically *Plenos Regionales*) that are not the constitutional court.

An additional challenge to delegating *amparos directos en revisión* to *Plenos Regionales* lies in its implementation. This delegation would have budgetary implications, as these courts currently lack the infrastructure to handle such a significant addition to their dockets. Expanding their capacity would require hiring additional staff to process the increased caseload—something that runs counter to President Sheinbaum’s austerity policy. In fact, despite the impending implementation of the judicial reform, the Sheinbaum administration recently approved, supported by allied political parties, one of the largest budget cuts to the Federal Judiciary in recent history.

Regarding *amparo indirecto* appeals, it is important to note that many of them are already adjudicated by *Tribunales Colegiados de Circuito*—specifically those that do not involve constitutional questions, those challenging local laws or federal/local regulations, and those challenging federal laws when a binding precedent (*jurisprudencia*) already exists. This delegation allows the SCJN to focus solely on cases involving novel constitutional questions that challenge federal laws. Therefore, it is precisely these types of cases the only possible expansion of the list of *amparo indirecto* appeals that could be delegated.

²² In 2024, over 8,300 *amparos directos en revisión* appeals were filed, of which only 1,523 were assigned to a *ponencia* (less than 18%). See, SCJN, *Informe Anual de Labores del Poder Judicial de la Federación 2024*, 2024, p. 45.

²³ On this matter, see the reasoning presented by the Second Chamber of the Supreme Court in the *amparo directo en revisión* 6686/2016, decided in the session of March 22, 2017.

In 2024, the SCJN dealt with 832 such cases: 486 were admitted, 263 were dismissed, and 80 were returned to *Tribunales Colegiados de Circuito*.²⁴ While fully delegating these cases would significantly reduce the SCJN's workload, it is important to bear in mind the already existing overload and delays affecting the *Tribunales Colegiados de Circuito*. Choosing this route, then again, would require rethinking the budget to ensure these courts have the needed resources to process the additional workload.

IV. CONCLUSIONS

The Chambers of the SCJN played a fundamental role in Mexico's constitutional justice system. Not only because they were the decision-making bodies that dealt with the most cases, thus combating the backlog to achieve the goal of a system able to administer justice efficiently. But also, because a significant volume of the constitutional doctrine that modernized the justice system was developed in the Chambers. From our perspective, there is no doubt that constitutional justice loses with its suppression. Undoubtedly, justice will be slower, more discretionary, and with less deliberative quality. For this reason, the weak reasons given to justify its suppression are puzzling.

The new SCJN will not have an easy task when it comes to the restructure of its working model to handle its caseload without the help of the Chambers. There are many complex issues behind the decisions to be made by the first set justices elected by popular vote. How to achieve a better justice system? How to ensure a faster administration of justice with better argumentation? How to guarantee transparency in the administration of justice? How to make the justice system closer to the citizens? These and other difficult questions will be even more difficult to address without the support of the Chambers of the SCJN.

As the Spanish philosopher George Santayana said: "those who cannot remember the past are condemned to repeat it." Following Emilio Rabasa in *La Constitución y la Dictadura*, for whom the Chambers prevented the "voice" of the Supreme Court from being clearly and indubitably expressed, the original design of the 1917 Constitution eliminated the Chambers that

²⁴ SCJN, *Informe Anual de Labores del Poder Judicial de la Federación 2024*, 2024, p. 42.

existed under the 1857 Constitution. However, the mere passage of time was enough to reconsider, and, not only to reestablish the Chambers but to increase their number.

The Mexican constitutional system is complex and obscure; an example of this is the dual task of the SCJN as constitutional court and, at the same time, Supreme Court. As long as this dual role is maintained, the Chambers will remain essential to improve the functioning of the justice system. It remains to be seen how long it will take for those who eliminated them with the stroke of a pen to realize how necessary and useful they were. Until then, the costs of a slower and less deliberative administration of constitutional justice will be absorbed, as always, by the most vulnerable people in the country.

Chapter 10

Case Law and the System of Precedents: Scenarios Following Judicial Reform

María Amparo Hernández Chong Cuy¹

I. INTRODUCTION

The case law system, and therefore of binding precedents, appears to have been unaffected by the 2024 judicial reform. Very few provisions relating to how case law is composed and enforced were modified. The number of votes required for a Supreme Court precedent to be binding was modified (reduced from eleven to nine justices), and the rules defining the threshold for binding precedent from the Court's Chambers were eliminated because the Chambers were extinguished.² The rest of the rules remained virtually unchanged.

This might seem like a good thing, since almost everything affected by the reform has a poor outlook, but that is not the case. Although the case law system is apparently untouched by the 2024 judicial reform, it has suffered a significant impact. A closer look reveals that its functionality and objectives have been significantly hampered, if not compromised. The reform deepened problems caused by the concept of “mandatory precedent,” introduced with the 2021 reform, and raised new ones. To explain, let's give a little context.

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² Articles 94 and 99 of the Mexican Constitution.

II. THE CONTEXT: FROM THE HISTORIC STATUS QUO TO ITS COLLAPSE IN 2021

In Mexico, case law has historically been recognized as a source of law. It is a body of law composed of decisions from certain courts, most notably the Supreme Court, which is binding on lower-ranking courts (similar to what is known in common law systems as “stare decisis”).

Since 1882, the rule was that a single ruling, even coming from the Supreme Court, did not render “stare decisis,” that is, was not inherently binding on inferior judges. To achieve binding force on inferior courts, it was required that (i) what was reasoned in the ruling be reiterated in five cases and (ii) that those cases be decided by a qualified majority.

In the mid-20th century, to alleviate and reduce the Court’s backlog, federal Circuit Courts were created. They were eventually allowed to establish binding case law for their lower courts; also, together with the rule of necessary reiteration of five rulings to achieve binding force for their lower courts, although for these Courts a unanimous vote was required.³

It wasn’t until the 1960s that, in an effort to standardize divergent interpretative criteria (a problem that arose with the proliferation of jurisdictional bodies), the concept of “contradiction of theses” (renamed “contradiction of criteria” in 2021) was introduced. Under this figure, a mechanism was introduced by which two (or more) contradictory solutions to the same interpretative problem could be referred to the Supreme Court; the Court would then decide which should prevail, thus standardizing normative interpretation and the functioning of the system as a whole. This particular kind of ruling was binding *per se*; that is, whatever was stated in that single ruling, even

³ The reason for the introduction of the rule of necessary reiteration has been a topic addressed by some historians. Some consider it to be the formula that was consistent at the time of the introduction of the concept of case law into the legal system, given the political tensions prevailing at the end of the 19th century between the judiciary and the executive branch. Others emphasize the difficulties of dissemination and communication that prevailed in the country at that time, which included decisions by the Court, especially since if the judge deviated from what was obligatory, liability would arise. Suffice it for now to say that from the first moment the binding force of decisions by the Supreme Court—our current understanding of case law—was introduced, this binding force was conditioned on its prior reiteration in five cases. See: Suprema Corte de Justicia de la Nación, *La Jurisprudencia en México*, Mexico, Suprema Corte de Justicia de la Nación, second edition, 2005, pp. 60 ff; Manuel Gonzalez Oropeza, *Jurisprudencia: Su conocimiento y forma de reportarla*, Mexico, Suprema Corte de Justicia de la Nación, 2005, pp. 35 ff; Emanuel Guadalupe Rosales Guerrero, *Estudio Sistemático de la Jurisprudencia*, Mexico, Suprema Corte de Justicia de la Nación, 2005, pp. 33 ff.

so by a simple majority of votes (fifty percent plus one) was binding on all other courts.

Then, with the judicial reform of 1994, “unconstitutionality actions” (an abstract means for the judicial review of newly promulgated laws) were introduced, and the “constitutional controversy” (a litigation venue between public powers) was rebooted. Both proceedings are of the exclusive jurisdiction of the Supreme Court. These reforms are significant because they established that, when the Supreme Court issues a single decision in either of these two types of cases—and that decision is approved by a qualified majority (eight out of eleven votes)—it becomes binding across the entire judicial system. This marked a significant difference from what happened in all other disputes decided by the Supreme Court, typically *amparo* trials, which have always been the cases that occupy the bulk of its work (*amparo* trials challenge acts of administrative and legislative bodies, and are the gold standard venue for judicial human rights protection).

This is how the case law system functioned for much of the 20th century and the beginning of the 21st century. Generally speaking, it worked pretty well.

On the other hand, the dissemination of judicial decisions also evolved in important ways. First, rulings were published in papers, specialized literature, and then in official periodical gazettes, but such practices evolved to the publication of “theses” (instead of rulings). “Theses,” as they became known and published, are a very short summary of the conclusions adopted in ruling, sometimes and other not, expressing the supporting reasons, but not the facts of the cases (generalities about the facts of cases began to be included very recently). Currently, “theses” are published electronically. Initially, this form of informing the public about rulings through “theses” had its merits, but in the long run, it would foster unfortunate practices that took root. Because information was easily consumed, in tiny and abstract pieces, it discouraged the development of a culture of reading, comprehension, reasoning analysis, dialogue with arguments, and discovery of factual contexts and limits. Instead of developing analytical, critical, and argumentative skills, fragments of information were often cited. Thus, the invocation of theses often became useless and uncritical, sometimes even yielding unfair and illogical results.

III. THE 2021 REFORM: THE ABANDONMENT OF THE REITERATION RULE

In 2021, with the aim of countering the flaws mentioned above rendered by the theses system and emphasizing the Supreme Court’s hierarchical superiority—or so it was claimed—a “system of precedents” was introduced, which eliminated for Supreme Court the rule of necessary reiteration historically required for the ruling to have the binding force as precedent for lower courts.⁴

However, this change is in fact unconnected to neutralizing the malpractice fostered by the theses system of giving public notice of what was decided. Nor did the rule of reiteration taint nor tarnish the Supreme Court’s hierarchical superiority. Moreover, in practice, lower courts almost automatically replicated the Court’s decisions, even when they were not binding, sometimes persuaded by the reasoning, other times by the convenience it represented, especially where the inferior rulings were appealed.

The rule of reiteration did not make access to justice more costly, as was also said to justify this reform. It is true, as was said, that sometimes a conflict had to be litigated on issues that had already been decided by the Supreme Court. However, this happened because the administrative authorities, who are in charge of applying the law were not (and still are not) bound to the Court’s precedents; they have never been obligated by case law. This was not addressed nor resolved by abandoning the rule of necessary reiteration.

The rule of reiteration, due to its long-standing roots, was already part of our legal tradition and had its advantages: it fostered more detailed reflection; it put the merits of the criteria to the test of time, which sometimes made them stronger and other times not; it opened a valuable opportunity for non binding precedents to be known and understood, and for them to be nurtured and refined. The binding force came with maturity and with the certainty that the defined case law did not go unnoticed. Evidence of its social recognition can be found in the *Ley de Amparo* (procedural law for *amparo* trials) enacted in 2013 (whose original draft was authored by the Court itself, albeit

⁴ “Decree Declaring the Amendment and Addition of Various Provisions of the Political Constitution of the United Mexican States Regarding the Federal Judiciary,” *Official Gazette of the Federation*, March 11, 2021, (“Decreto por el que se declara reformadas y adicionadas diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, relativos al Poder Judicial de la Federación,” Diario Oficial de la Federación).

the legislative process was officially a bill of the Executive branch). On that occasion, to the preexisting requirements of five reiterations and a qualified vote, a more complex rule was added stating that the reiterations had to come from judgments issued on different dates.⁵ That is, if five identical cases were resolved on the same day, it did not count as a “reiteration.” Underlying was that such scenarios did not provide an opportunity to patiently reflect on interpretations that would be binding for all courts and thus extinguish inferior judges’ interpretative space and decisional margins.⁶

Ultimately, the abandonment of the reiteration rule in 2021, given the prevailing political situation at the time, notably a Supreme Court presided over by a person openly aligned with a very strong President López Obrador, resulted in a veiled and highly technical mechanism of political control over the judiciary.

In what sense? Under this new system of precedent, it would be enough to persuade eight of the eleven justices of the Supreme Court to decide a single case in a particular way for all similar disputes moving through the judicial system—from the lower courts upward—to be resolved in the same manner. It amounts to a far-reaching control panel over the entire judiciary: a single ruling from the Supreme Court, achieved by influencing just a few of its members, could effectively suppress the adjudicative independence of all the country’s judicial bodies. Consider that this was a period marked by a surge in human rights litigation—primarily through *amparo* proceedings—challenging a wide range of administrative acts and legislative initiatives promoted by President López Obrador, many of which concerned highly sensitive and politically charged issues.

IV. THE INVIABILITY OF THE NON-POLITICAL PURPOSES OF THE SINGLE-PRECEDENT SYSTEM

Aside from this, the reform encountered various obstacles to the epistemic purposes it supposedly pursued: changing the way we approach, understand,

⁵ Articles 222 and 223 of the Amparo Law (*Ley de Amparo*), currently repealed.

⁶ The reasons for this change are anecdotal and are not the subject of discussion here. What is important to note is that the rule of reiteration was considered positive, as was the opportunity to reflect on the decision before making it generally binding.

use, invoke, and reason legally on the basis of the Court’s reasoning of its interpretation of the law instead of merely consuming “theses” and using them as simple rules.

First, there was the Supreme Court’s jurisdictional design and, in that sense, the fact that it resolves several thousand cases each year.⁷ A system of precedents like the one established by the 2021 reform works well when the superior judicial body—as occurs, for example, in the United States Supreme Court—resolves around a hundred cases annually. That is not the case.

The Mexican Court resolves a significant volume of cases. In this universe, of course, there are major constitutional problems, in which case what is ruled gets known by all, but also many more minor, but also important, issues that get lost in the volume and make it very difficult even to understand what was decided. From this, it follows that the judiciary public officers and servants, including those of the Court itself, cannot even be aware of all the binding precedents produced, let alone the rest of the courts, much less study them in depth.

With this situation in mind, the 2021 reform introduced some modifications to reduce the Supreme Court’s caseload, but it was not enough. Notably, it established the finality of the decisions by which the President of the Supreme Court admitted or rejected *amparos* for appellate review (of which thousands are received).⁸ This sought to reduce the numerous challenges filed against their inadmission, burdening the Court’s Chambers with procedural (and not substantive) work so that, freed from these, they could focus more on substantive issues.

It was a small solution to a significant problem. The cases continued to arrive by the thousands, and although the admissions filter was initially tightened, the number of *amparo* cases resolved by the Court since then and

⁷ In the last ten years, the year with the fewest outgoing cases by Presidential resolution was over 2,500 cases, while the highest was over 8,500, with the average being over 5,300 per year. Data by the author, based on records and published statistics from the Supreme Court, available at: Secretaría General de Acuerdos, “Estadística Judicial,” *Suprema Corte de Justicia de la Nación*, <https://www.scjn.gob.mx/sites/default/files/pagina/documentos/2025-01/Ingresos%20Egresos%202024.pdf>

⁸ Bear in mind that in Mexico, albeit there is a “certiorari” for selecting which appellate judgements the Court decides, such decision has been in the last decade only vested in the Court’s President. The President’s inadmission of a case could be, until 2021, challenged. This rendered thousands of cases to be decided by the two Chambers, very few of plausible merits.

to this day remains significant, reaching more than a thousand a year.⁹ That is, the problem has persisted, rendering the precedent system dysfunctional and hindering legal certainty.

In addition, the aforementioned intention to encourage a new way of working, using, and reasoning with precedents went against the deep-rooted legal culture among judicial officials and the forum we referred to earlier, which is prone to the uncritical and decontextualized invocation of jurisprudential “theses.” That doesn’t change by decree.

The unsustainable and idealized justifications used for abandoning the necessary reiteration rule and the structural and cultural barriers to its actual functioning that were not addressed in 2021 led to the understanding that the underlying motive was, rather, the aforementioned techno-political long-range control of the judiciary. This was the status quo of the Mexican judicial system when the 2024 judicial reform was implemented.

V. THE 2024 REFORM AND THE TECHNICAL-POLITICAL CONTROL OF THE JUDICIARY

The Obrador-Sheinbaum judicial reform, with its electoral access to the position of Justice to the Court and the reduction in the number of its members (from 11 to 9), significantly impacted and accentuated the role of the single mandatory precedent rule as a mechanism of technical-political control.

Popular vote as a means of accessing the position of Justice, considering the significant power of the ruling party, presents a considerable risk that the new generation of Justices could advance a constitutional interpretation guided more by partisan interests and political circumstances, than by the constitutional charter of rights. This, considering the results of the last federal election, will translate into judicial deference toward the ruling party, both in the legislative and executive branches, with a view to tolerating a discretionary exercise of power and diluting the checks and balances established in the Constitution. The techno-political remote control that the single precedent

⁹ Data compiled by the author, based on the aforementioned Statistical Report. During 2021, 2022, and 2023, outgoing cases due to presidential resolutions increased, but this was not the case in 2024, where a decrease in the dismissal rate (more admissions) was observed. In 2021, the number of *amparos* resolved by collegial resolution (*amparo directo* and *indirecto*) totalled over 650; in 2022, over 800; in 2023, over 1,000; in 2024, over 2,200.

system would facilitate over the entire judiciary with the 2021 reform resulted further facilitated with the 2024 reform because, in addition to the political inertia noted above, now, alleging the reduction from eleven to nine Justices, the number of votes necessary to achieve the binding precedent was reduced, so that now only six votes are required to bind all lower courts, federal and local, whether or not they are part of the judicial branches.¹⁰

VI. THE VULNERABILITY OF HUMAN RIGHTS PROTECTION CASE LAW

The deference to the ruling party fostered by this redesign of the Supreme Court and the access to judicial posts makes it foreseeable that there will be few occasions in which legislation or administrative acts will be ruled unconstitutional or unconventional (as towards international conventional law, which in Mexico has been recognized as formal source of law and constitutional hierarchy), especially if these laws stem from the current legislatures.

In this environment of political deference, it would not be surprising if, with the new Supreme Court, we soon have a body of case law distinct from the current one, which in the last decade has been characterized by important rulings and progress in the protection of human rights. Given that the Court can deviate from its precedents, it is to be expected that interpretations that strengthened human rights and limited the exercise of power will be replaced by new interpretations. The “literal” interpretation, which the current legislative branch has insisted on is the only admissible kind of legal interpretation (to prevent any other type of interpretation, and which does poor favor to the protection of rights), will have a greater prevalence. To the extent that this happens, the case law and criteria protecting human rights emanated from Circuit Courts will be overridden, and, in this inertia, their production will also diminish.

¹⁰ In Mexico, there are many courts that are not formally integrated into the judicial branches, both at the federal and state levels. When this occurs, they are generally part of the executive branches. This is the case with agrarian justice (federal), contentious-administrative justice (federal and local), bureaucratic law (federal en local) and military justice. At the local level, in some states, it is also the case with electoral justice. The binding nature of the Supreme Court’s case law is binding on all jurisdictional authorities, whether federal or local, in or out of the judiciary branches. This also has historical roots.

VII. THE AGGRAVATION OF THE STRUCTURAL BARRIERS OF THE PRECEDENT SYSTEM

At a more operational or functional level, none of the measures introduced by the 2024 reform addresses the structural problems that have affected the implementation of binding single precedent since 2021. Chief among them is the well-known issue of the high volume of cases heard by the Court. In fact, the reform has only made matters worse. By eliminating the Court’s two—now-defunct—chambers and requiring it to operate solely in plenary session, the reform reduced its operational capacity while leaving its jurisdictional docket unchanged. In other words, the Court remains competent to hear the same types of cases, but now, it has a diminished internal structure for processing them. As a result, the structural bottleneck that had already made the precedent system dysfunctional has become even more severe.

VIII. THE CHALLENGES OF REPOPULATING THE JUDICIARIES

At the other end of the equation are the lower-ranking judges, who are the ones in charge of working with the system of case law and precedents. For a system of precedents to work, it foremost requires a judiciary that knows precedents, understands and uses them. Without denying the great incentive that the newly instated “Disciplinary Court” will have on them, due to judges’ fear of being sanctioned for not following binding precedent, the fact is that the massive repopulation of the federal and state judiciaries mandated by the 2024 reform, through electoral rules that do not prioritize nor value judicial experience or practice, much less case law knowledge, suggests that the operation of the case law system will be further strangled.

When new officials take office, they will require substantial time to become familiar with the existing body of case law. Although “evaluation committees” were formally established as auxiliary bodies to assist the three branches of government—the only entities authorized to nominate judicial candidates—in practice, there was virtually no meaningful assessment, deliberation, or screening regarding the technical knowledge or skills required for the position. Even less attention was given to the candidates’ understanding and command of existing case law.

Thus, while the transitional legislation has established that existing binding precedents will remain in force after the reform,¹¹ in practical terms, its effectiveness will depend, first and foremost, on whether these precedents are even known and internalized by the new population of elected judges. Especially to newcomers.

This does not ignore the fact that searching for case law is a task that can now be facilitated by digital engines, but it still requires some preparation to contextualize, interpret, and sort through a wide range of precedents to bring them to the specific case. It is certainly not an impossible task, but it does entail a long-term pedagogical and training effort, which requires time, will, budget, human capital, and infrastructure.

The massive repopulation makes it highly likely that, in practice, the new judges will rely heavily on the court's clerks in their day-to-day work. These officials will mostly remain in their positions after the election, at least for some time, and are acquainted with the use of case law. But in this context, the aggregation of these circumstances can lead to what is colloquially known as "clerk justice." This is so-called when judges rely on or depend excessively on what the clerk knows, which leads to the clerk, not the judge, actually making the decisions, or at least exerts a strong influence on them. This practice has been, and rightly so, harshly criticized when such has been suspected or noted in the outgoing judiciary, due to the fraud it entails and the risks of corruption it entails.

Furthermore, we must not forget that the 2024 judicial reform was introduced when we were in the midst of a transition toward a different way of thinking, working, and using the mandatory "precedents" that the 2021 reform would induce. For outgoing judges, this has meant embarking on a relearning process in which some progress was made, but that with their departure vanishes; a process that newcomers, in addition to all else mentioned, will have to embark on.

The persistence of structural barriers and the many challenges consequent to repopulating the federal and state judiciaries hinder both the delivery of

¹¹ Transitory Article Eighteen, new Organic Law for the Federal Judiciary, Official Gazette of the Federation (Diario Oficial de la Federación), December 20, 2024.

technically sound justice and the case law system’s ability to contribute to the legal certainty to which it aspires.

IX. CONCLUSION

As briefly explained here, the 2024 judicial reform has an enormous impact not only from the perspective of the separation of powers, which has been much discussed due to its significant impact on judicial independence. The reform impacts everything related to the administration of justice, even something seemingly technical, theoretical, or unrelated to its core electoral component, such as the case law system. It disrupted it by exacerbating its political and technical risks and complexities, and adding others that were previously unimaginable.

Carnelutti said that “it is far more preferable for the people to have bad laws with good judges than bad judges with good laws.” At this crossroads, whether the judicial system is functional, whether it can offer the legal certainty and security to which it ultimately aspires, or at least continue to be the source or instrument of rights protection to which we are accustomed, and whether—very importantly—it does not serve as a political control panel, will depend mainly on luck, due to the randomness of the judicial candidate selection process (literally, it was lottery-like)¹² and the randomness inherent in any popular election. It will depend on the profiles, experience, and vision of the judges who, in this electoral randomness, if not manipulation, will yield the 2025 summer election, the 2027 elections, and their successive ones. And, of course, whether the significant weaknesses in Mexico’s institutional practices, professional associations, and the training of new generations of lawyers can be overcome.

¹² Candidates were finally defined through lottery-like draws, amongst registered candidates that passed the “Evaluation Committees” checking. Such a draw was mandated by judicial reform.

Chapter 11

The Other Judicial Reform: What's Happening in Mexico's States

Javier Martín-Reyes¹ and Saúl López-Noriega²

I. INTRODUCTION: THE MISSING HALF OF MEXICO'S JUSTICE REFORM³

It is no surprise that the debate over judicial reform in Mexico has primarily centered on the federal level. Historically, this has been the case in both public discourse and academic discussions regarding the justice system. Although the vast majority of conflicts that affect people's daily lives are adjudicated in state courts,⁴ academic literature has focused on the constitutional reforms impacting the federal judiciary. Examples of these reforms include the 1994 redesign of the Supreme Court,⁵ the 2008 introduction of the adversarial criminal justice system,⁶ and the 2011 reforms that granted

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³ We thank Luis Mauricio Varas Silva and Gadiel Solorio Alvarez for their support as research assistants.

⁴ Javier Martín Reyes, *Reforma en materia de justicia cotidiana*, Mexico, Fondo de Cultura Económica, 2017.

⁵ Héctor Fix-Fierro, "Judicial Reform and the Supreme Court of Mexico: The Trajectory of Three Years," *United States-Mexico Law Journal*, vol. 6, no. 1, 1998, pp. 1–20.

⁶ David A. Shirk, "Criminal Justice Reform in Mexico: An Overview," *Mexican Law Review*, vol. 3, no. 2, 2011, pp. 189–211.

constitutional status to human rights treaties, along with the redesign of the writ of amparo.⁷

The judicial reform of 2024 is no exception. Public attention has focused almost exclusively on the federal level,⁸ and rightly so: as explained in this book, the changes to the federal judiciary are of the utmost importance. However, it would be a mistake to ignore what is happening in the states of the Mexican Federation.⁹ A crucial aspect of this judicial reform is the constitutional mandate requiring states to radically restructure their judicial systems.

This aspect is so crucial that we are not exaggerating when we say it represents another reform—the other half of the reform. This is because it intervenes at the local level of justice, which is the most critical for social conflicts, and will consequently have a significant impact on the daily life of Mexico’s population. What sets the states apart from the federal level is their significantly broader legislative discretion to redesign their judicial systems—an often overlooked but crucial distinction.

This chapter deals with the topic on two levels. On the normative level, we explain why Mexican states maintain significant discretion in structuring their judicial branches. At the descriptive level, we offer an initial assessment of how judicial reform has been carried out locally. Our argument is twofold. On one hand, states have considerable leeway to distance themselves from some of the most destructive changes adopted at the federal level. On the

⁷ Francisca Pou Giménez, “Judicial Review and Rights Protection in Mexico: The Limits of the 2011 Amparo Reform,” *SSRN*, October 15, 2012, <https://ssrn.com/abstract=2210959>.

⁸ See, for example, the literature that analyzes the bills that eventually led to judicial reform: César Astudillo, “La reforma al Poder Judicial. Efectos en el estatus y la mecánica de elección—por voto popular—de sus integrantes,” in Sergio López Ayllón et al. (eds.), *Análisis técnico de las 20 iniciativas de reformas constitucionales y legales presentadas por el presidente de la República* (February 5, 2024), Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024, pp. 287–300; Juan Jesús Garza Onofre, “Reforma al Poder Judicial. Sustitución del actual Consejo de la Judicatura Federal por un nuevo órgano de administración judicial separado de la Suprema Corte y creación de un tribunal de disciplina judicial,” in Sergio López Ayllón et al. (eds.), *Análisis técnico de las 20 iniciativas de reformas constitucionales y legales presentadas por el presidente de la República* (February 5, 2024), Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024, pp. 301–318; and Javier Martín Reyes “La elección popular de los poderes judiciales en México: breve radiografía del Plan C,” in Sergio López Ayllón et al. (eds.), *Análisis técnico de las 20 iniciativas de reformas constitucionales y legales presentadas por el presidente de la República* (February 5, 2024), Mexico, Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2024, pp. 319–334.

⁹ To simplify, we use the term “states” in this text to refer to the “federal entities” (entidades federativas) of Mexico, i.e., the 31 states and Mexico City. While Mexico City is not a “state” in the formal constitutional sense, it is regarded as a federal entity with a constitutional status that is broadly similar, though not identical, to that of the other states.

other hand, this leeway has been squandered in practice. Instead of innovating or correcting, most states have chosen to adopt the federal model—almost without reservation.

II. ONE BILL, MANY INTERPRETATIONS: PRESIDENT LÓPEZ OBRADOR’S PROPOSAL

To answer the question of how much discretion the states have in reorganizing their judicial systems, it is necessary to return to the origin of the constitutional amendment. A particularly relevant starting point is the bill introduced by then-President López Obrador on February 5, 2024, which offers the first clues for interpreting the scope of the reform at the state level.¹⁰ The initial proposal made it clear that the reform was primarily aimed at the federal level. The bill’s explanatory section and its proposed articles centered almost exclusively on overhauling the Federal Judiciary. Yet, despite their limited number, some references to the state level are of considerable constitutional significance.

López Obrador’s bill sought to amend the federal Constitution by introducing provisions with a direct impact on the institutional design of state judiciaries. One of the most significant provisions was the requirement to elect nearly all state judges through popular vote, including *state district judges*, who typically serve on trial courts, and *state magistrates*, who usually sit on appellate-level state high courts. In addition, the constitutional reform mandates the creation of two separate bodies—one for administration and another for oversight—to replace existing state judicial councils.¹¹

Another key element of López Obrador’s bill was his explicit intent to replicate, at least in part, the proposed federal model of judicial elections at the state level. To this end, he proposed that Article 116 of the Constitution establish that “[t]he nominations of candidates and the election” of state magistrates and state district judges be carried out “in accordance with the

¹⁰ “Bill by the Federal Executive with a Draft Decree to Amend, Add, and Repeal Various Provisions of the Political Constitution of the United Mexican States Regarding Judicial Reform,” *Parliamentary Gazette*, year XXVII, no. 6457-15, February 5, 2024 (“*Iniciativa del Ejecutivo Federal con proyecto de decreto, por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de reforma del Poder Judicial*,” *Gaceta Parlamentaria*, año XXVII, núm. 6457-15).

¹¹ Julio Rios and Luis Fernando Soto, “Instituciones judiciales subnacionales en México, 1917-2014,” *Colombia Internacional*, no. 91, 2017, pp. 243–263.

principles” set for the Federal Judiciary and under the “terms and modalities” defined by the constitutions and laws of the states.

Thus, in the original version of the reform, the scope of legislative discretion available to the states hinged on two key interpretive questions: What exactly was meant by the “principles” established in the constitutional reform for the nomination and election of judges? And, consequently, how much discretion did the states have to define the “terms and modalities”? Answering these questions would not have been straightforward, given that constitutional interpretation allows for multiple methods and canons, each of which can yield significantly different readings of the same provision, or set of provisions.¹² Had the reform been approved in that version, it is highly likely that a genuine interpretive dispute would have arisen, with divergent yet plausible readings of the Constitution.

However, while these interpretive challenges were not entirely eliminated, they were significantly narrowed in the final version of the judicial reform. The language ultimately incorporated into Article 116 of the Constitution—along with the reform’s transitional provisions—substantially reduced the space for interpretive controversy. In what follows, we examine the key constitutional provisions introduced by the 2024 judicial reform to assess the scope of the constitutional mandate imposed on the states regarding the redesign of their judicial systems.

III. THE APPROVED JUDICIAL REFORM: HOW LITERAL WORDING EXPANDED THE STATES’ SCOPE

At first glance, it may seem that the approved version of the judicial reform reduced the scope of action for the states. This is because, during the legislative process, the wording of Article 116, Section III, of the Constitution was modified, expanding the list of elements that must be considered in the design of local judicial systems. The approved text establishes that “[t]he nominations of candidates and the election of judges and magistrates who make up the State Judicial Branches shall be carried out in accordance

¹² See, for a notable Latin American example: Roberto Gargarella, “Un papel renovado para la Corte Suprema. Democracia e interpretación judicial de la constitución,” in Roberto Gargarella (ed.), *Teoría y Crítica del Derecho Constitucional*, Buenos Aires, Abeledo Perrot, 2008, vol. 1, pp. 403–427.

with the *principles, procedures, terms, modalities, and requirements* established by this Constitution for the Federal Judiciary, *to the extent that they are applicable.*¹³ In other words, while the previous version only required adherence to the “principles,” now the “procedures, terms, modalities, and requirements” established for the federal judiciary must also be considered.

However, two important clarifications must be made regarding the interpretation of this constitutional provision. First, Section III of Article 116 of the Mexican Constitution itself establishes that the federal principles, procedures, terms, modalities, and requirements must be followed by the states only “to the extent that they are applicable.” Second, the constitutional reform includes a transitional article that mandates a strictly literal approach to interpreting the decree. Specifically, Transitional Article Eleven provides that “[f]or the interpretation and application of this Decree, all organs of the Mexican State and all judicial authorities shall adhere to its literal meaning, and no analogous or expansive interpretations shall be allowed that seek to disregard, suspend, modify, or render ineffective its terms or its legal force, whether in whole or in part.”

This means that states are only required to follow the “principles, procedures, terms, modalities, and requirements” established for the Federal Judiciary when those elements are literally applicable to the nomination and election of state judges and magistrates. Any provision concerning the nomination of federal candidates or the election of federal judges is binding on the states only if its content can be applied to them in a literal and direct manner. This is because the Constitution expressly prohibits the use of “analogous or expansive” interpretations that would seek to disregard, suspend, modify, or render ineffective what is textually established. This is not a matter of complex interpretation—it is a clear and unequivocal constitutional mandate.

The mandate of literal interpretation carries significant implications. Chief among them is that any provision of the judicial reform that does not expressly concern the *nomination* of candidates or the *election* of judges and magistrates

¹³ Our emphasis. “Decree Amending, Adding, and Repealing Various Provisions of the Political Constitution of the United Mexican States Regarding Judicial Reform,” Official Gazette of the Federation, September 15, 2024 (“Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de reforma del Poder Judicial,” Diario Oficial de la Federación.).

is not binding on the states. For example, rules governing the manner and timing of electing the president of a state high court would not apply, as they do not relate to the nomination or election of judges or magistrates, but rather to the internal structure and operation of state judiciaries.

Even more importantly, under the strict literal interpretation required by the Constitution, the vast majority of provisions governing the nomination and election of federal “Supreme Court justices,” “circuit judges,” or “district judges” cannot be applied to the states, as these judicial positions simply do not exist at the local level. These are, in other words, provisions that are not literally applicable to state judiciaries. And while one might consider it reasonable to draw functional parallels between federal and state-level positions, doing so would entail relying on an analogous or expansive interpretation—something that is expressly and categorically prohibited by Transitional Article Eleven.

What does this mean in practice? In reality, very few of the provisions governing the nomination and election of federal judges are literally applicable to the states. Among them, one could include: (i) the obligation to establish in the law “the form and procedures for the integration of judicial bodies through open competitions, observing the principle of gender parity” (Article 94 of the Mexican Constitution); (ii) the right of candidates to have “equal access to radio and television” (Article 96); and (iii) the prohibition that “[p]olitical parties and public officials may not engage in proselytizing or take a position for or against any candidate” (Article 96). Given the way these provisions are textually formulated in the Constitution, they may be understood as principles, procedures, terms, modalities, or requirements that could be considered literally applicable to the process of nominating and electing judges and magistrates at the state level.

It should be noted, however, that the above does not mean there are no other constitutional provisions that constrain the legislative discretion of the states. In particular, the final version of the reform introduced a set of additional provisions into Article 116 that impose specific obligations on state governments. These include:

1. To establish the conditions for the election of state judges and magistrates “through direct and secret voting by the citizens.”

2. To create “a Court of Judicial Discipline and [...] a judicial administration body with technical, managerial, and decision-making independence, in accordance with the principles established in this Constitution for the Federal Judiciary.”
3. To determine the conditions for “the entry, training, and permanence of those who serve in the State Judiciaries.”
4. To establish, at a minimum, for “the judges and magistrates who make up the State Judiciaries,” some of the requirements set for federal judges and magistrates.¹⁴
5. To respect the prohibition stating that “[n]o person may be appointed as a Magistrate if they have held the position of state cabinet-level official or equivalent, State Prosecutor, or Local Legislator in their respective State during the year prior to the date on which the State Congress publishes the corresponding call for applications.”
6. To create a “public, open, transparent, inclusive, accessible, and gender-equal mechanisms for evaluation and selection that ensure the participation of individuals with the necessary technical knowledge to perform the role and who have distinguished themselves for their honesty, good public reputation, competence, and professional and academic background in the exercise of legal activities.”
7. To respect the rules that establish that “[m]agistrates and judges shall serve a nine-year term, may be re-elected, and, if re-elected, may only be removed from office under the terms established by the State Constitutions and the State Public Officials’ Accountability Laws.”
8. To establish both a salary guarantee and an upper limit, such that “magistrates and judges shall receive adequate and non-waivable remuneration, which may not exceed that established for the President

¹⁴ Specifically, Article 116, Section III, of the Mexican Constitution provides that state judges and magistrates “shall meet the requirements set forth in Sections I to IV of the second paragraph of Article 97 of this Constitution,” namely: (i) “to be a Mexican citizen by birth, in full exercise of civil and political rights”; (ii) “to hold, as of the date of publication of the call for applications, a legally issued law degree and to have obtained a general grade point average of at least eight out of ten, or its equivalent, and an average of nine out of ten, or its equivalent, in the subjects related to the position for which the candidate is applying, whether at the undergraduate, specialization, master’s, or doctoral level”; (iii) “to be of good reputation and not to have been convicted of an intentional criminal offense punishable by imprisonment”; and (iv) “to have resided in the country during the year prior to the publication of the call for applications.”

of the Republic in the corresponding budget and shall not be reduced during their term in office.”

9. To establish the prohibition stating that “within the State Judiciaries, no funds, trusts, mandates, or similar contracts may be created or maintained unless they are expressly provided for by law.”

In sum, the legislative discretion available to the states for implementing judicial reform is considerably broader than a cursory reading might suggest. This leeway is not unlimited, of course—the constitutional framework does impose specific boundaries, as outlined in this section. Yet, it remains clear that the states retain meaningful autonomy to shape the structure and functioning of their local judiciaries.

The question, then, is how the states have actually exercised that legislative discretion. Thus far, we have analyzed the constitutional framework that defines—and constrains—the scope of state action in redesigning their judicial branches. Yet the mere existence of this normative space does not, in itself, ensure that it will be used. In the next section, we offer an initial descriptive overview of how different states have begun to implement the judicial reform and of the patterns that are starting to emerge in that process.

IV. LEGISLATIVE DISCRETION WITHOUT INNOVATION: THE LOCAL JUDICIAL REFORM IN MOTION

It is often said that, in federal systems, the constituent states function as laboratories for institutional experimentation. It is preferable to contrast the successes and failures of multiple imperfect solutions—hallmarks of a federal mosaic—than to risk everything on a single proposal,¹⁵ as would be the case if the Obrador-Sheinbaum reform were implemented uniformly across all judicial branches in the country.

However, in the case of this judicial reform, we have seen little experimentation and much imitation. Most states that have amended their local

¹⁵ See, e.g., the work of Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, Oxford, Oxford University Press, 2018.

constitutions have chosen to replicate the federal model almost wholesale—along with all the problems that come with it. Only a handful of states have introduced elements of innovation, and even then, in a limited and fragmented way. It is these cases that merit closer examination.

The first category of innovations involves the introduction of additional requirements for accessing judicial positions at the state level, such as the obligation to pass specific evaluations or obtain certifications. At first glance, these measures might appear minor. However, in the context of a federal judicial reform that is extraordinarily lax when it comes to evaluation, such provisions adopted by some states acquire notable significance. As discussed in other chapters of this book, the federal model establishes “evaluation committees” with broad discretionary powers, which are not even required to implement basic mechanisms—such as knowledge-based examinations—that are essential for assessing the technical competence of those seeking to join the Federal Judiciary.

This is why it is particularly noteworthy that some states have chosen to introduce, albeit with varying degrees of specificity, evaluations or certification mechanisms that may prove more rigorous than those contemplated in the federal model. Consider the following examples: the state of Aguascalientes requires candidates for state magistrate positions to undergo “a technical-legal evaluation, developed with objective and reasonable parameters aligned with the specialization of the functions to be performed.”¹⁶ The state of Coahuila, in turn, mandates “certification of an appropriate judicial profile, issued by the institution responsible for the judicial training of the State Judiciary.”¹⁷ Meanwhile, the state of Durango requires judicial candidates to present “[c]ertification of experience in administering justice or

¹⁶ See Article 54, second paragraph, section IV, of the Constitution of the State Aguascalientes. “Decree Number 79, Amending, Adding, and Repealing Various Provisions of the Political Constitution of the State of Aguascalientes,” *Official Gazette of the State of Aguascalientes*, December 18, 2024 (“Decreto Número 79, por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política del Estado de Aguascalientes,” Periódico Oficial del Estado de Aguascalientes).

¹⁷ “Decree Number 218, Amending, Adding, and Repealing Various Provisions of the Political Constitution of the Independent, Free, and Sovereign State of Coahuila de Zaragoza,” *Official Gazette of the State of Coahuila de Zaragoza*, December 19, 2024 (“Decreto Número 218, mediante el cual se reforman, adicionan y derogan diversas disposiciones de la Constitución Política del Estado Independiente, Libre y Sobrano de Coahuila de Zaragoza,” Periódico Oficial del Estado de Coahuila de Zaragoza).

having completed a course, specialization, master’s degree, or doctorate in the field of justice delivery from the Judicial University.”¹⁸

Of course, the mere existence of these provisions does not guarantee that local evaluations will be rigorous or meaningful. In practice, they may amount to little more than symbolic or simulated exercises. Still, when contrasted with the federal experience—where, in the lead-up to the 2025 electoral process, none of the candidates appearing on the ballots were required to take any form of knowledge test—the presence of such requirements at the state level is, at the very least, an encouraging sign. It may not be sufficient, but it suggests that, in some states, more serious and professionalized selection processes remain within reach.

Another area in which some states have diverged from the federal model is in setting minimum age requirements for holding judicial office. Although this might appear to be a secondary issue, it is worth underscoring that such requirements were eliminated at the federal level by the judicial reform. In contrast, the state of Durango requires candidates for judicial office to “[h]ave reached a minimum age of twenty-five at the time of taking office.”¹⁹ Similarly, the state of Coahuila establishes that, to be eligible for a magistrate position, a candidate must “[h]ave reached thirty-five years of age as of the date of the corresponding call for applications.”²⁰

Another area of innovation involves adopting restrictions designed to ensure fairer conditions in judicial elections. The state of Coahuila, for example, explicitly established that “[u]nions, the church, and foreign persons are prohibited from engaging in electoral campaigning within the process.” In a context where judicial elections risk becoming auctions for influence—where a wide range of actors may seek to sway the outcome²¹—it is noteworthy that some states are attempting to limit the participation of groups with significant economic, ideological, or political power.

¹⁸ “Decree no. 071, Amending, Adding, and Repealing Various Provisions of the Political Constitution of the Free and Sovereign State of Durango, regarding the State Judiciary,” *Official Gazette of the State of Durango*, November 14, 2024 (“Decreto No. 071, mediante el cual se reforman, adicionan y derogan diversas disposiciones de la Constitución Política del Estado Libre y Soberano de Durango, en materia del Poder Judicial del Estado,” Periódico Oficial del Estado de Durango).

¹⁹ Decree no. 071, State of Durango, 2024.

²⁰ Decree no. 218, State of Coahuila, 2024.

²¹ Javier Martín Reyes, “2024: año de la independencia judicial,” *El Universal*, December 19, 2024.

Another area where some states have departed from the federal model concerns the method for selecting the head of the local judiciary. As is known, the federal reform established a system in which the presidency of the Supreme Court is determined by popular vote: the position is assigned to the candidate who receives the highest number of votes, is held for two years, and rotates based on vote totals. Some states, however, have opted for alternative approaches. In Baja California, for example, the head of the judiciary “shall be elected by a majority vote of the magistrates present at the election session, and shall serve a three-year term.”²² Similarly, in Coahuila, the presidency of the judiciary is held by “a Magistrate appointed by the Full Bench for a three-year term, with the possibility of being re-elected for an additional term.”²³

Finally, some states have also sought to address the issue of substitutes—or so-called surrogate judges—a crucial topic at the federal level, also discussed elsewhere in this book. In this regard, the state of Coahuila established in its judicial reform that “[f]or each list of primary candidates for the State High Court and the Court of Judicial Discipline, a list of substitute candidates shall also be elected, preferably composed of individuals from within the Judiciary, in order to preserve the judicial career path, in accordance with the terms established by law.”²⁴

As we have seen, local innovations in the implementation of the judicial reform do exist, but they are rare and scattered. Some states have added evaluation, age, or certification requirements; others have sought to improve electoral fairness, rethink how the head of the judiciary is appointed, or address the issue of surrogate judges. But these efforts remain the exception, not the rule. In reality, despite enjoying a broad margin for legislative discretion, the vast majority of states have chosen to replicate the federal model with minimal adjustments and even less ambition. Rather than serving as laboratories for institutional experimentation, most states have acted as little more than photocopiers of the model approved at the national level.

²² “Decree No. 36, Whereby Various Articles of the Political Constitution of the Free and Sovereign State of Baja California Are Amended in Matters Concerning the State Judiciary,” *Official Gazette of the State of Baja California*, December 31, 2024 (“Decreto No. 36, Por el que se reforman diversos artículos de la Constitución Política del Estado Libre y Soberano de Baja California en materia del Poder Judicial del Estado,” *Periódico Oficial del Estado de Baja California*).

²³ Decree no. 218, State of Coahuila, 2024.

²⁴ Decree no. 218, State of Coahuila, 2024.

V. CONCLUSION: WHAT DIDN'T HAPPEN —AND WHAT STILL COULD

The 2024 judicial reform unexpectedly opened a door: by mandating a strictly literal interpretation of its provisions, it ended up expanding—rather than limiting—the space for institutional design at the state level. From a constitutional perspective, states enjoy significant legislative discretion to address some of the most troubling features of the federal model. They have the power to strengthen their selection processes, reinforce the independence and autonomy of their judicial institutions, establish genuine local judicial careers, secure stronger budgetary protections, and design institutional frameworks that better reflect their specific contexts.

In practice, however, that legislative discretion has been largely squandered. With few exceptions, the states have chosen to mechanically replicate the federal model—along with its flaws and risks. Despite having the constitutional freedom to build something better, they simply chose not to. And yet, as the Mexican intellectual Octavio Paz once wrote, “history is a box of surprises.” The hope is that, in the future, amid a possible democratic realignment, states will abandon the path of uncritical and deferential imitation, and instead embrace the role of institutional laboratories that Mexican federalism still allows them to become.

Chapter 12

Faceless Judges

Rodrigo Brito Melgarejo¹

I. INTRODUCTION

The Obrador-Sheinbaum judicial reform will fundamentally change the structure of the judiciary, the composition of the country's courts, and the way in which they perform their duties. The debates on the impact of this reform have resonated in various sectors, especially over the method by which the heads of the courts in Mexico are to be elected. However, other issues have also sparked controversy, such as the inclusion of the so-called “faceless judges” in the constitutional text. This provision has raised concerns about its possible impact on the exercise of certain human rights recognized and protected by international treaties to which the Mexican state is a party. In addition, it may negatively affect public policies related to justice by exposing the ineffectiveness of traditional security protocols to protect members of the judiciary and raising concerns about a lack of transparency and possible violations of due process.

The violence in the country and the risks to which members of the judiciary are exposed—especially when dealing with cases related to organized crime—served as an argument (justified or not) for considering the inclusion of a provision in the Constitution during the constitutional reform process

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that would make it possible to conceal the identity of judges to ensure their safety. This objective is of course understandable, especially in a country where the murder of judges—and even their families—while hearing cases involving criminal groups mainly related to drug trafficking is a well-documented reality.²

An important fact: Although there is no national record of attacks on members of the judiciary, it has been documented that 21 % of judges who responded to an exploratory survey on threats to the judiciary reported that they had experienced an attack or threat to their safety in the last ten years.³

II. FACELESS JUDGES IN LATIN AMERICA

Mexico is not the first country to include faceless judges in its legal framework. Much has been said about the precedents of such measures in countries such as Italy after the assassination of Judge Giovanni Falcone for persecuting members of the mafia. However, what happened in Europe is not far removed from the judicial policies that have been in place in the countries of our region for more than three decades. In contexts characterized by drug trafficking, guerrillas, or terrorism, Latin American countries have resorted to faceless justice to prevent the assassination or threat of assassination of judges in violent situations.

² In his column titled “Jueces sin rostro: ni plata ni plomo,” published in *Milenio* on December 6, 2022, Ricardo Monreal Ávila, then a prominent senator from MORENA’s parliamentary group, dedicated his article to the memory of state judge Roberto Elías Martínez—who was murdered in Zacatecas—before stating that this figure is an exceptional measure, “but the violence experienced in several regions of the country is also exceptional.” For him, therefore, “the figure of ‘faceless judges’ [needed] to be considered as a means to protect and ensure the safety of judicial officers, especially those who prosecute and sentence individuals accused of drug trafficking, organized crime, terrorism, or extreme crimes that pose a high risk to society.” To support his arguments, Monreal referenced cases such as that of federal judge Antonio Bermúdez, who handled cases involving individuals accused of drug trafficking, and that of Judge Uriel Villegas and his wife, Verónica Barajas, who were executed as they left their home.

³ See Mariana Campos et al., *Cuando impartir justicia es peligroso. Los ataques a la integridad del personal judicial en México*, Mexico, México Evalúa, 2024, p. 5. In listing the attacks on the integrity of the judicial personnel involved in the study, the document mentions, for example, that: “In the judicial systems of Baja California and Sonora, personnel work in an environment permeated by violence. According to testimony, the dominance of organized crime in Baja California is such that in certain areas there are frequent cases in which a party belongs to or is associated with criminal organizations, which is a risk factor for judicial personnel. In this state, extortion and threats (murder, assault and ‘disappearances’) against judges are often associated with drug trafficking or the assailants are identified as members of these organizations. In addition to explicit threats, there are also symbolic threats. For example, one judge received a funeral wreath as a form of death threat.” *Ibid.*, p. 92.

In the 1990s, as part of the measures to combat the Medellín cartel, Colombia issued Decree 2700 of 1991 (Code of Criminal Procedure), which established a temporary “faceless judiciary” to protect the country’s justice system from the attacks of this criminal organization. Due to the constitutional concerns raised by Article 158 of the decree—which provided for measures to protect the identity of judges—the Constitutional Court had to review the validity of these provisions. Although the court declared them constitutional, it stated that their meaning and purpose “can only be fully understood if the serious public order circumstances in which they were enacted are taken into account.”⁴

Five years later, a “regional justice” regime was enacted with Law 270 of 1996, which included similar protective measures as those previously mentioned, but whose validity was set to expire in 1999. The temporary nature of these amendments to the law became especially evident when attempts were made to render the regulation, originally adopted for a specific period, permanent.

When examining the constitutionality of this proposal, the Colombian Constitutional Court recalled that faceless justice is an “exceptional, extraordinary regulation, justified only by a very specific situation that prevents the proper exercise of justice at that time and that has a temporary and precarious validity.” Furthermore, the court found that the structure of the judicial system, which aimed to make some of the measures adopted by the regional judiciary permanent, was discriminatory, as the procedural guarantees before the courts were different for some defendants than for others, contrary to constitutional provisions and the rights enshrined in international human rights treaties.⁵

The figure of the faceless judges was also used in Peru as a measure by Fujimori in response to the actions of groups such as the Shining Path (*Sendero Luminoso*) and the Tupac Amaru Revolutionary Movement (*Movimiento Revolucionario Tupac Amaru*). Individuals associated with these organizations, labeled as terrorists, were tried by faceless judges who did not grant them the minimum rights for their defense. These faceless courts violated several

⁴ Decision C-053 of the Colombian Constitutional Court of February 18, 1993.

⁵ Decision C-393 of the Colombian Constitutional Court of April 6, 2000.

procedural obligations that Peru had accepted internationally, as Human Rights Watch pointed out. In the context of faceless justice, practices such as torture and coercion became evident, and sentences were handed down without the defendants having the opportunity to question their accusers in accordance with the applicable legal framework. In many cases, the evidence presented was not even examined, and no effort was made to verify unfounded allegations.⁶ The unjust conviction of a large number of individuals by faceless courts led to their abandonment after five years in Peru.⁷

In El Salvador, following the declaration of a state of emergency in March 2022, President Bukele championed reforms to the Code of Criminal Procedure that introduced the concept of faceless judges. Through these amendments, Article 73-A was added to the Code of Criminal Procedure to establish measures to “protect the life, personal integrity, liberty and other rights of persons who are part of the regular courts that permanently exercise criminal jurisdiction, as well as specialized courts with criminal jurisdiction.” These measures included the provision that “the names and general information of judges, magistrates, or acting clerks, or other information that could serve to identify them shall not appear in administrative or judicial records; a number or other identifier could be used for these purposes.” However, these measures have led to the violation of several procedural rights, prompting the Due Process Foundation to call for alternative solutions to ensure the safety of judicial employees without violating due process or undermining the elements that underpin a democratic society.⁸

While these three cases are not the only ones in Latin America, they serve as examples of failed attempts that, in an effort to protect those who administer justice, have led to a series of human rights violations without achieving the intended goals of procedural rule changes.⁹

⁶ These facts can be found in the document, Human Rights Watch, “Presunción de Culpa: Violaciones de los derechos humanos y los tribunales sin rostro en Perú,” <https://www.hrw.org/legacy/spanish/informes/1996/peru.html>.

⁷ Recently, Congressman Juan Burgos presented a bill aimed at restoring faceless courts to try high-risk criminals.

⁸ See the analysis contained in “Jueces sin rostro y otras violaciones a la garantía de juez independiente e imparcial,” *Due Process of Law Foundation*, a document that provides an analysis of the reforms accompanying the state of emergency regime in El Salvador, https://dplf.org/wp-content/uploads/2024/10/jueces_sin_rostro-detencion_provisional_-_indebido_proceso_-_analisis_reformas_el_salvador_hoja.pdf.

⁹ In 2019, for example, Rio de Janeiro included the figure of the faceless judge in its legislation, making it the seventh federal entity in the country to adopt such procedural measures to protect members of the judiciary.

III. THE EMERGENCE OF FACELESS JUDGES IN THE MEXICAN CONSTITUTION

Although the introduction of faceless judges has not had the desired success in other regions, there has been interest in assuming this role in Mexico for several years. For example, it is worth noting that President Felipe Calderón, in his fourth year in office, during his participation in the “Dialog for Security towards a State Policy,” expressed his willingness to discuss the proposal of the coordinator of the New Alliance party in the Chamber of Deputies, Reyes Tamez Guerra, to create the role of “anonymous” judges in the Mexican legal system to protect judicial officials from retaliation by criminal groups. This proposal ultimately failed to gain acceptance, mainly because it contradicted the model that had been introduced in the country: the oral trial in criminal cases, which requires a greater degree of transparency in the judicial system.

This temptation, characteristic of an exception to the use of state violence that began in Mexico with the war on organized crime in 2006, persisted in the years that followed. However, it was not until President López Obrador’s morning press conference on August 20, 2024, that the need for a “kind of protection” for judges handling cases related to organized crime was mentioned to counter the threats and pressures they face. This statement may have influenced the inclusion of faceless justice in his original judicial reform initiative during the drafting process.

Although there are no other arguments in the reports adopted by both chambers in support of the amendments to Article 20 of the Constitution allowing faceless judges to be admitted to the country, some members of the Morena faction have expressed their support for the measure. For example, during the discussion of the reform report, Representative Lidia García Anaya commented that the anonymity of judges in some instances should protect their integrity and that of their families. However, this and other arguments that could justify such a change to the reform package with an impact on the functioning of the judiciary were not included in the reports. This omission gives the impression of a hasty or last-minute decision in the reform process.

Finally, the judicial reform would include a new provision in Article 20 of the Constitution, which states that “in cases of organized crime, the judicial administration may take the necessary measures to safeguard security and

protect the identity of judges, in accordance with the procedure established by law [...]” In this context, the new Organic Law of the Federal Judiciary provides in Article 81 that “in cases where a person is under investigation or prosecution for an offense within the meaning of the Federal Law on Combating Organized Crime, the Judicial Administration Body may take the necessary measures to ensure security and, in exceptional cases, to protect the identity of judges, in accordance with the procedure established by law.”

It remains to be seen how these norms will be implemented, but the experience described casts doubt on the effectiveness of such measures and suggests that the measures could violate human rights recognized in various international instruments adopted by the Mexican state.

IV. IMPLICATIONS AND TENSIONS WITH INTERNATIONAL NORMS

Events such as those in Peru that followed the introduction of faceless courts led to human rights violations that eventually reached inter-American jurisdiction because they violated the judicial guarantees set forth in Article 8.1 of the American Convention on Human Rights and the provisions of Article XXVI of the American Declaration of the Rights and Duties of Man, which enshrine the right of every person accused of a crime to a fair and public manner.

In its repeated case law, the Inter-American Court of Human Rights, when examining the compatibility of proceedings before “faceless” or identity-concealed judges, has held that they violate the San José Pact because they prevent defendants from “knowing the identity of the judges and therefore assessing their suitability, questioning their competence, legality, independence and impartiality, as well as determining whether there are grounds for recusal in order to exercise their defense before an independent and impartial tribunal.”¹⁰

In *Lori Berenson Mejía v. Peru*, the Inter-American Court, in reviewing the military trial against Mrs. Berenson for her alleged association with members of the Tupac Amaru revolutionary movement, found that the involvement of officials with concealed or “faceless” identities made it impossible for the

¹⁰ Inter-American Court of Human Rights, *Case of Pollo Rivera et al. v. Peru*, Merits, Reparations, and Costs, Judgment of October 21, 2016, Series C No. 319, paragraph 171.

alleged victim to exercise an adequate defense.¹¹ This court has also described the concealed identity of the judges as “a defect” in the proceedings.¹²

Within the framework of the Universal System for the protection of human rights, the use of anonymous judges to combat terrorist activities has also been questioned. This is because the courts implementing such measures often suffer from “not only the problem that the accused does not know the identity and status of the judges [even if they have been verified by an independent authority], but also other irregularities.”

Among these, the United Nations Human Rights Committee has highlighted the following issues: (1) exclusion of the public, or even the accused or their representatives, from the proceedings; (2) restrictions on the right to choose one’s own lawyer; (3) severe limitations or denial of the accused’s right to communicate with their lawyers, especially when incommunicado detention is involved; (4) threats against lawyers; (5) inadequate time for preparing the case; and (6) severe limitations or denial of the right to summon and question witnesses, particularly the prohibition of cross-examining certain categories of witnesses, such as the police officers responsible for the detention and interrogation of the accused.¹³

Similarly, the Special Rapporteur on the independence of judges and lawyers has pointed out that while the states must take security measures to protect the judiciary from any outside influence, incitement, pressure, threat, or interference, these measures must not lead to the activity of judges being concealed or obscured. Extreme measures such as “faceless judges” lead to a deviation from the judicial guarantees enshrined in Article 14 of the International Covenant on Civil and Political Rights. These include the right of every person to be heard publicly and with adequate guarantees by a competent, independent, and impartial tribunal.¹⁴

¹¹ Inter-American Court of Human Rights, *Case of Lori Berenson Mejia v. Peru*, Merits, Reparations and Costs, Judgment of November 25, 2004, Series C No. 119, paragraph. 167.

¹² Inter-American Court of Human Rights, *Case of J. v. Peru*, Preliminary Objection, Merits, Reparations, and Cost, Judgment of November 27, 2013, Series C No. 275, paragraph 270. Other cases addressing the conventionality of faceless judges include *García Asto and Ramírez Rojas v. Peru*, and *Castillo Petruzzi and others v. Peru*.

¹³ See paragraph 23 of the General Observation No. 32 on the right to a fair trial and equality before courts and tribunals.

¹⁴ Thematic Report 20 (A/72/140), paragraphs 81 and 82. This idea has also been highlighted in Thematic Report 3 (A/HRC/35/31) from the same Rapporteur, which states that: “The involvement of ‘faceless judges’

These statements emphasize that faceless justice fails to meet the “fundamental norms of a trial with due guarantees, particularly the need for [an independent and impartial tribunal].”¹⁵ However, apart from the non-compliance with international human rights standards associated with the introduction of a faceless judiciary, it has been shown that numerous abuses have occurred in those countries that have accepted the anonymity of some members of the judiciary.

Elías Camhaji and Juan Esteban Lewin have documented, for instance, that in Colombia, faceless justice resulted in the existence of “secret evidence,” testimonies, or expert reports that defense lawyers could review without knowing their sources. This hindered the defense from arguing that a witness had an improper interest or was suspected of any bias.¹⁶

In Peru, civil organizations estimate that about 1,400 people convicted by faceless courts were innocent. In addition, the decrease in criminal activity in the Andean country during the operation of an anonymous justice system has been questioned, as it is suspected that many arrests authorized by faceless judges have, in practice, led to enforced disappearances.¹⁷

In addition to these examples of the negative consequences of the introduction of faceless justice, another important aspect must be taken into account: The adoption of such measures has proven ineffective in some cases in the face of heightened violence,¹⁸ and the only thing it has created in the collective imagination is “a reminder of authoritarianism and the restriction of rights.”¹⁹ In view of all these elements, it is easy to conclude that the decision taken in Mexico to appoint faceless judges does not seem very promising for our democracy.

and secret witnesses, as well as the limitations on the presentation and use of evidence, are examples of measures that affect the independence of the judiciary, restrict the accused's right to due process guarantees, and systematically violate their right to a fair trial,” paragraph 52.

¹⁵ General Comment No. 32, paragraph 23.

¹⁶ Elías Camhaji and Juan Esteban Lewin, “Del Perú de Fujimori a El Salvador de Bukele: el fallido experimento de los ‘jueces sin rostro’ en Latinoamérica,” *El País*, September 7, 2024.

¹⁷ *Id.*

¹⁸ *Id.* Camhaji and Lewin refer to a case that supports this assertion: in 1992, the “faceless judge” Myriam Rocío Vélez, who was presiding over a case involving one of the homicides ordered by Pablo Escobar, was murdered in Medellín along with her bodyguards.

¹⁹ *Id.*

Chapter 13

Beyond the Judicial Election: The New Mexican State

Daniel Quintanilla Castro¹

Mexico's controversial judicial reform was approved by Congress on September 11, 2024. For some, a long period of mourning for the death of constitutional democracy is sure to follow. The problem with mourning a normative ideal, which many Mexicans doubt materialized as such, is that it takes valuable time away from thinking about the reform's immediate and concrete consequences. Trying to foresee the immediate future of the reform becomes even more urgent if we consider that Mexico's judicial reform is part of a larger and broader political process that seeks to fully rewrite, without abolishing it, the Mexican constitution.

In this article, I will analyze the possible consequences of Mexico's judicial reform in connection with the figure of faceless judges, the expansion of military jurisdiction, and constitutionally mandated pre-trial detentions. Beyond trying to understand if Mexico's constitutional democracy is dead or in a hibernating period, I believe it is even more pressing to interpret the recent judicial reform—along with these three changes to the constitutional text—as a major change in the history of Mexico's criminal policy. A change of this magnitude will not only impact academic debates and publications;

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it will bring immediate and harmful consequences to a citizenry that, since 2006, has been caught between organized crime and the increasingly institutionalized abuses of the Mexican state.

Let us recall the main argument for the judicial reform wielded by former president López Obrador: Judges are corrupt because they free criminals and allow tax evasion. If we take the former president at his word, an incorruptible judge will not tolerate cheating on taxes but is tolerant and permissive towards prosecutor and police misconduct. Put differently, an honest judge would make prosecutors' job easier and would not allow due process to get in the way of justice.

The fact that this narrative was so prominent in the reform's public debate—repeated time and again by López Obrador in his daily morning press conferences—leads us to think that Mexico's judicial reform, besides being a radical reorganization of the federal judiciary, is also a fundamental component of the federal government's criminal policy pursued under Claudia Sheinbaum's government. This new criminal policy, besides considering judges as the most important component of the criminal justice system and, thus, the only component that need to be subject to radical change, leaves district attorney's offices (at both the local and federal levels) untouched. At the time I am writing this piece, no legislative proposals for reforming these institutions have been presented to Congress.

If one of the main arguments for defending the reform was judges' leniency (without examining the reason and motivations behind liberating alleged criminals), it is not far-fetched to think that the forthcoming campaigns judicial elections will offer a tougher stance on crime and a higher tolerance for prosecutor and police misconduct. But electing judges who promise to be unburdened by due process is not the only Mexico's criminal policy has taken. This change will be complemented by faceless judges, a judicial policy bolstered by both yesterday's Latin American right wing, through *Fujimorismo* in Perú, and again today, through Bolsonarismo in Brazil and *Bukelismo* in El Salvador.

Throughout the reform's public debate, some opinion voices denounced the inclusion of faceless judges as a last-minute afterthought: López Obrador floated the idea during a morning press conference, and Ricardo Monreal,

the current ruling party's whip at Congress, listened and obeyed. The truth is that Monreal had already suggested the idea of faceless judges in 2022. In an op-ed he wrote for the newspaper *Milenio*, Monreal—a doctor in law and a graduate-level professor—formulated a blunt syllogism to defend an institution that openly violates human rights recognized in the Mexican constitution and international law:

Of course, this figure carries many risks. It can foster abuse of authority and human rights violations. Nonetheless, it is more harmful to justice that judges are being intimidated due to violence or made useless as a cause of death threats. As in any extreme situation, the question is not choosing between a good or a better decision but choosing the lesser evil.²

Why Monreal did not consider a special mechanism to protect judges—instead of a figure that leads to grave human and due process violations—is one of the many questions that were not answered throughout the debate and approval of the Obrador-Sheinbaum reform. Monreal's stand regarding faceless judges, nonetheless, is part of a recent change of attitude towards human rights by electoral representatives of the Mexican left. Many of the members of MORENA, the current ruling party, supported Mexico's momentous human rights reform in 2011 when they were part of the opposition. However, those same representatives—who are now in power and constitute a congressional majority—have not explained to the public why they are using all their available political and legal power to undermine 2011's human rights reform, while not daring to erase it completely from the constitutional text.

Moreover, Mexico's judicial reform cannot be separated from another equal, if not more important, constitutional amendment: the incorporation of the National Guard, a new national police force, into the Ministry of Defense.

² See Ricardo Monreal Ávila, "Jueces sin rostro: ni plata ni plomo," *Milenio*, December 6, 2022, <https://www.milenio.com/opinion/ricardo-monreal-avila/antilogia/jueces-sin-rostro-ni-plata-ni-plomo>. For a summary of the history of the figure of faceless judges in Latin America, see: Elías Camhaji and Juan Esteban Lewin, "Del Perú de Fujimori a El Salvador de Bukele: el fallido experimento de los 'jueces sin rostro' en Latinoamérica," *El País*, September 8, 2024, <https://elpais.com/mexico/2024-09-08/del-peru-de-fujimori-a-el-salvador-de-bukele-el-fallido-experimento-de-los-jueces-sin-rostro-en-latinoamerica.html>.

This amendment, one of the most transcendental in Mexican constitutional history since 1857, will impact the new judiciary in two ways.

First, the subordination of the National Guard to the Ministry of Defense expands military jurisdiction to a new police force that will be permanently in charge of public security throughout the country. The meaning behind the expansion of military jurisdiction has to be stated as clearly as possible: amending the constitution's article 129 (which, until now, ordered that the military remained in its barracks in times of peace) represents a historical deviation from the constitutional tradition—enshrined in Mexico's 1857 constitutional text and preserved by 1917's revolutionary constitution—separating civil and military affairs in Mexican political life.

However, expanding military jurisdiction to a national police force goes even further: it represents both the treason and defeat of the Mexican liberal project that came to life with the emergence of the republic in 1824.³ Limiting military jurisdiction and eliminating ecclesial legal privileges had been historic struggles of Mexican liberalism since Valentín Gómez Farías's vice presidency in 1833. For a political party like MORENA, which presents itself as the heir of Mexican 19th-century liberalism, a change that radically alters Mexican constitutional tradition should not have gone unnoticed. But neither historiography (nor human rights) are an obstacle to the dominant party's pragmatism or, to put it bluntly, political cynicism. The pay of *obradorismo* to Mexican constitutional tradition was to expand military jurisdiction—a colonial institution happily adopted by Creole conservatism after Mexico's independence—and bring a civil corporation such as the police under its protection.

Secondly, besides expanding military jurisdiction, MORENA also amended the constitution to grant the National Guard powers for conducting criminal investigations. In a country where torture forms part of the police's and prosecutor's methodological repertoire for criminal investigation,

³ Article 129 (122 in the 1857 constitution), unmodified from the time of its writing until 2024, stated the following: "In time of peace no military authorities shall exercise other functions than those bearing direct relation to military discipline. No permanent military posts shall be established other than in castles, forts and arsenals depending directly upon the Federal Government, or in camps, barracks, or depots, established outside of inhabited places for the stationing of troops." The recently amended article 13 of Mexico's current Constitution now includes the National Guard as one of the corporations, along with the army, the air force, and the navy, protected by military jurisdiction.

a national police force under the military could—with impunity—submit evidence obtained through coercion and torture to prove, in court, the culpability of defendants. It should be noted that another recent constitutional reform also granted powers of criminal investigation to the Ministry of Public Security, an institution that is not under the umbrella of the Secretary of Defense. Nevertheless, this amendment, nor any other statute, does not specify how a civilian institution will be able to check, audit, and hold accountable a police institution protected by one of the most impenetrable legal shields in terms of scrutiny and transparency.

A summary is necessary at this point. The new cocktail of Mexican criminal prosecution has been concocted with the following ingredients: a policy of leniency towards prosecutors and district attorneys bolstered by former president López Obrador and supported by president Claudia Sheinbaum; an interpretation of due process as a possible act of corruption; faceless judges; and, lastly, the expansion of military jurisdiction to the National Guard as well as the granting of powers of criminal investigation to this novel military (or to use the term currently in vogue in Mexico, *militarized*) corporation charged with the country's public security.

To this explosive mix, we must add another key ingredient: the increase in the number of crimes that, according to the Constitution, merit mandatory pre-trial detention. This means that, starting on December 31, 2024, Mexican judges will be forced to jail defendants accused of broadly and vaguely formulated crimes such as “organized crime,” “use of social programs with electoral ends,” “crimes committed with violent means such as arms and explosives” — among others — before criminal responsibility is factually and legally demonstrated. Put differently, the prosecution will only be required to prove that such a crime has *likely* been committed for the judge to order the defendant's pre-trial detention. In this way, mandatory pre-trial detention is a device that grants constitutional validity to the recurrent practice of jailing people without a criminal sentence.

There is no doubt that this collection of constitutional amendments represents a major change in Mexico's history of criminal prosecution. Moreover, it is a sequence of changes attuned to the policy followed by Nayib Bukele in El Salvador, that has also served as inspiration for other right-wing parties

in Latin America. True, MORENA, in contrast to Bukele, has not argued that it is necessary to build more high-security prisons. The reason behind this circumstance could be that there is not enough budget for such a project or, simply, because such a proposal was a part of (former presidential candidate) Xóchitl Gálvez's campaign.⁴

It is also important to note that neither López Obrador nor Claudia Sheinbaum, in contrast to Bukele or Argentinian president Javier Milei, have referred to people accused of committing crimes as social parasites or a plague that must be exterminated.

Nevertheless, despite this kindhearted rhetoric, the federal government and its majority in Congress have granted the state an enormous repressive capacity without any form of checks and controls besides the costly and inaccessible writ of *amparo* (a form of *habeas corpus*). We must also bear in mind that this is the same state that has been incapable of eradicating torture as a method of criminal investigation and whose public officials demonstrably participate in cases of human rights violations.⁵

The biggest risk faced by the Mexican people is that these new state powers will be deployed within an institutional vacuum. Between 2025 and 2027, many judges will be fired and replaced by those who won the elections. We will not know, and we cannot currently know, if the new judges will possess the necessary knowledge to manage the administrative and legal work of a court. Furthermore, the future of clerks and other judiciary workforce remains

⁴ See the following note on Xóchitl Gálvez's proposal: Claudia Flores, "¿Dónde podría operar la cárcel de máxima seguridad? Xóchitl Gálvez da más detalles de su propuesta," *Infobae*, March 7, 2024, <https://www.infobae.com/mexico/2024/03/07/donde-podria-operar-la-carcel-de-maxima-seguridad-xochitl-galvez-damas-detalles-de-su-propuesta/>.

⁵ The most recent findings on torture in Mexico, published by the Observatory Against Torture, can be found here: Angel María Salvador Ferrer and Jessica Grisell Mascorro Rodríguez, *Observatorio Contra la Tortura Hallazgos 2022*, USAID, 2024, <https://www.documenta.org.mx/wp-content/uploads/2024/02/observatorio-contra-la-tortura.pdf>. These findings, from the year 2022, were published in 2024. In 2022, a total of 6,398 alleged victims of torture were recorded across the country. In its 2022 World Report (Human Rights Watch, 2022 *World Report*, January 13, 2022, <https://www.hrw.org/es/world-report/2022/country-chapters/mexico#e7830b>) Human Rights Watch reported that between 2013 and 2020, the National Human Rights Commission (CNDH) received 3,799 complaints related to military abuses. In its 2022 National Census on Federal and State Human Rights, the National Institute of Statistics and Geography (INEGI) reported a total of 1,495 complaints filed with the CNDH against the federal prison system during 2021. At the state level, 6,784 complaints were filed against state prison systems, 6,496 against state public security institutions, and, finally, 19,421 against the Office of the Attorney General, now known as the Office of the Prosecutor General. The census summary is available here: National Institute of Statistics and Geography (INEGI), *Censo Nacional de Derechos Humanos en las Entidades Federativas*, 2022, https://www.inegi.org.mx/contenidos/programas/cndhe/2022/doc/cndhe_2022_resultados.pdf.

uncertain. It is unclear whether they will be fired when elected judges take their positions. Additionally, many workers might voluntarily resign due to an impending salary reduction. This reduction is a consequence of a recent—yes, another one—constitutional amendment that restricts public servant salaries to be no higher than the president’s salary.

Without clear operational rules, proper implementation guidelines, and necessary adjustments to the criminal legal framework, it is also difficult to predict how the judicial reform will affect specialized criminal judges, including those who supervise the proper execution of sentences and those overseeing the juvenile criminal system. The reform’s issues do not end here. Four months before Mexico’s first judicial election, defendants still do not know what will happen to their cases if the presiding judges are removed. If such removals occur, all criminal trials nationwide would need to start over from the beginning since the imposition of a new judge mid-trial would be contrary to the National Criminal Procedure Code and the Constitution.

A second summary is necessary. At the federal level, the General Attorney’s Office and military police (the National Guard), now with powers of criminal investigation, will be allowed to operate without judicial controls—or feebler than the ones currently operating—during the time it takes the Federal Judiciary to resume its normal functioning. This punitive, persecutory, and improvised cocktail will then be replicated at the local level in the thirty-two states of the country. How long this vacuum will last is hard to say. What we can predict is that many of the elected judges would have promised their constituents a tougher stance against crime and an interpretation of due process more deferent to police and prosecutors.

This is where the reform’s authoritarian edge, and not in the swan song of Mexican constitutional democracy, reveals itself. This authoritarian tenor is more than represented by the fact that the reform gives a constitutional veneer to unrestrained criminal prosecution with military participation (a move that seems to be part of a larger constitution project of the current ruling party).⁶

⁶ There is an additional aspect to the reform that needs to be considered. The reform also reconfigured the labor division inside the Supreme Court. Once the reform comes into effect, the Court is obligated to reduce its number of justices from eleven to nine and conduct its deliberations exclusively in a plenary chamber. This means that the former division of labor, which divided the Court’s caseload by case matter (that is, one chamber of the court specialized in criminal and civil cases while the other solved labor and administrative

Prominent voices of public opinion have argued that the judicial reform assures López Obrador a place in history. But the real historical mission (if such a thing even exists in this context) is that a reform of monster proportions does not devour itself.⁷ If constitutional democracy has died in Mexico, maybe the first step to bring it back from the dead is to remember that, before making it a copy of the Federalist Papers, constitutional and criminal law should not be a grinding machine for those incapable of defending themselves in court. The consequences that this new Mexican state will bring are, for now, unpredictable. Although the future is uncertain and always open, there is little room for optimism when in recent months the contours of a state that will exercise few controls over its punitive and military power have been drawn. This authoritarian, punitive, and militaristic cocktail will leave behind much more than a strong hangover.

cases), will cease to exist. Consequently, a single plenary chamber with reduced personnel will need to take up the caseload that was previously distributed between two chambers, each composed of five justices. The new division of labor will produce a greater lag in the solution of criminal cases but also a bureaucratic dilemma. The judicial reform states that judges and justices will be subjected to a time limit for the resolution of cases under the penalty of being audited and penalized by a new inquisitorial institution aptly baptized as the Tribunal for Judicial Discipline.

⁷ I contend that history—or serious history at least—will not be concerned with López Obrador and Claudia Sheinbaum. Rather, history will be occupied trying to explain how the subordination of nation-states to formal and informal global markets has hindered their capacity to the point that “security” has become the only and last source of political legitimacy.

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