The Separation of Powers in Mexico

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I. CONSTITUTIONAL FOUNDATIONS

The separation of powers, according to the classical theories of John Locke, Charles Secondat Baron de Montesquieu, and the "checks and balances" of the American Constitution and practice, is a very recent reality in Mexico. Although the principle has always been formally recognized, the country achieved its two long periods of stability under autocratic and oligarchic regimes.¹

Mexico lacks a democratic tradition. There are not recurrent episodes of free elections and participative regimes with alternating political parties, which, although frustrated by military coups, abound in the rest of the Ibero-American countries.

During the twentieth century, Mexican society evolved in a dynamic process. It increased in number and in ethnic mix and transformed from rural to urban. Additionally, life expectancy, health conditions, and educational levels registered spectacular increases, and an enhanced middle class developed. The population also evolved from a passive spectator, a resigned and expectant mass, to a heterogeneous and active conglomerate, even though, if compared with industrialized democracies, it is still in

¹ These long periods of stability occurred between 1876 and 1910, as well as between 1929 and 2000.
an initial state of civil conscience and organization process of independent groups.

Mexico is ruled today under a Constitution that has been in force since 1917. It is through a series of reforms to the original normativity that Mexico has been achieving a transition toward democracy.

For many years, the 1917 Constitution was catalogued as "nominal" in the sense that Karl Loewenstein gave to this term: it was formally observed, even though power was concentrated in a political oligarchy. As Loewenstein rightfully pointed out, socio-economic conditions impeded its total fulfillment, but in the last instance, this could possibly be discerned with time.

Today, the Constitution can be conceptualized as "normative" by Loewenstein, as actions correspond to the established rule and power has been spread among several institutions and social entities.

According to the Mexican Constitution, a separation exists between the legislative and the executive branches. The executive branch is wholly vested in the President, who is elected by direct popular vote. The legislative is vested in a collective body, the Congress of the Union, which is divided into two chambers: one of deputies (representatives) and one of senators.

The Chamber of Deputies is composed of 300 members elected by relative majority in an identical number of single-member constituencies and 200 by the principle of proportional representa-

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4. See id.
5. See id.
6. [Editor's Note: Dr. Gamas provided the following objective source for a reader seeking to expand his or her base knowledge of the political institutions in Mexico: JOSÉ MIRANDA, LAS IDEAS Y LAS INSTITUCIONES POLÍTICAS MEXICANAS [THE IDEAS AND THE MEXICAN POLITICAL INSTITUTIONS] (Instituto de Derecho Comparado [Inst. of Comp. Rts.], 1952).]
7. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO] (hereinafter MEX. CONST.) art. 50.
tion, through regional lists in five multi-member constituencies into which the national territory is divided. No party can have more than 300 representatives through both principles.8

The Chamber of Senators is composed of 128 members. Within each of the 31 states and the Federal District, two are elected by relative majority voting (64), one is assigned to the first minority (32), and the remainder (32) are elected through the principle of proportional representation through the system of lists in a single national multi-member constituency.9

Each branch has its own powers, which it exercises independently, even though the participation of both is required for some. They are clearly and expressly established: Congress makes the law, and the President enforces it.10 Their functions are clearly separated.

Incompatibility exists between the legislative and administrative offices.11

Both branches issue from the popular vote, which elects them separately and so bestows each branch with its own legitimacy.

Second, the President freely appoints and dismisses his immediate subordinates, who are the secretaries of state in charge of the different departments and occupy the highest hierarchy in the administration.12 The President, however, possesses the constitutional powers, not the secretaries.13

Third, the Executive and its secretaries are not responsible to Congress as in a parliamentary system, in the sense that having lost the support of the majority they should necessarily resign.

The characteristic mechanisms of the parliamentary regime are absent. The election and integration of each organ of power are

8. MEX. CONST. art. 51, as amended, Diario Oficial de la Federación [Official [Gazette or Journal or Diary] of the Federation] (hereinafter D.O.) (Dec. 6, 1977); MEX. CONST. arts. 52-53, as amended, D.O. (Dec. 15, 1986); MEX. CONST. art. 54, as amended, D.O. (Aug. 22, 1996). [Editor's Note: The D.O. is a daily governmental publication like the United States' Federal Register. For more information or to retrieve laws from the D.O., visit http://www.gobernacion.gob.mx/EN/PtMain.php?pagina=dof. Note that dates within the D.O. often are expressed day-month-year as opposed to month/day/year. At the author's request, the use of as amended within the footnotes reflects a literal change to the text of the Mexican Constitution upon which the author relies. D.O. laws, etc., that amend a portion of the Mexican Constitutional Article upon which the author relies are omitted because more than 500 Mexican Constitutional Amendments exist.]
10. MEX. CONST. arts. 73, 80, & 89.
11. MEX. CONST. art. 62.
13. The President has the powers because they are so enumerated in the Mexican Constitution, but no specific powers are vested in the secretaries. It is the U.S. American system that we took as a model.
simultaneous but separated. As a result, the executive does not “emerge” from the majority of the legislative. There exists no “cabinet” with collective responsibility before the legislative assembly. Additionally, there do not exist “motions of censure” emitted by the legislative nor denied “votes of confidence” previously demanded by the Executive that would force the resignation of the President and his secretaries in cases of disagreement, if an important initiative is blocked or an action is severely criticized.

The President does not have any constitutional power to dissolve Congress and hold new elections outside the terms that are constitutionally set forth. Therefore, elections do not exist outside of the constitutionally mandated time periods.\textsuperscript{14}

However, it is understood that in the presidential system, as well as in the parliamentary system, ample cooperation between both organs of power is required for their proper functioning as well as for the country’s governance.

II. HISTORY

The presidential institution in Mexico was established in the first Constitution in 1824, once the country achieved independence from Spain and after an autocratic attempt to establish a monarchy succeeded for a brief period.\textsuperscript{15}

At this time, there were only three written constitutional models in existence: the French Declaration of Human Rights of 1789 and the revolutionary constitution of 1791; the United States Constitution of 1787; and the episodic Cadix (or Cadiz) Constitution of 1812. The 1824 Constitution adopted the form of government pre-

\textsuperscript{14} These constitutionally mandated time periods are as follows: six years for the President, three years for the deputies, and six years for the senators. MEX. CONST. art. 80, as amended, D.O. (Jan. 29, 1928); MEX. CONST. arts. 51 & 56, as amended, D.O. (Apr. 29, 1933).

\textsuperscript{15} [Editor's Note: Dr. Gamas provided the following objective sources for a reader seeking to expand his or her base knowledge of the events leading to Mexico’s emergence from Spanish colonial rule: J.M. OTS CAPDEQUI, EL ESTADO ESPAÑOL EN LAS INDIAS [THE SPANISH STATE IN THE INDIES] (1941); 4 RUBIO MANÉ JOSÉ IGNACIO, EL VIRREINATO [THE VICEROYALTY] (Instituto de Investigaciones Históricas [Inst. of Historic Investigations] & Fondo de Cultura Económica [Fund of Economic Culture], eds., 1983); SILVIO ZAVALA, EL MUNDO AMERICANO EN LA ÉPOCA COLONIAL [THE AMERICAN WORLD IN THE COLONIAL EPOCH] (1967); TIMOTHY E. ANNA, LA CAÍDA DEL GOBIERNO ESPAÑOL EN LA CIUDAD DE MÉXICO [THE FALL OF THE SPANISH GOVERNMENT IN MEXICO CITY] (Spanish ed. 1981); ROMEO FLORES CABALLERO, LA CONTRARREVOLUCIÓN EN LA INDEPENDENCIA [THE COUNTERREVOLUTION IN THE INDEPENDENCE] (1973); GUADALUPE NAVA OTEO, CABILOS DE LA NUEVA ESPAÑA EN 1808 [CITY HALLS OF THE NEW SPAIN IN 1808] (1973); LUIS VILLORO, EL PROCESO IDEOLÓGICO DE LA REVOLUCIÓN DE INDEPENDENCIA [THE IDEOLOGICAL PROCESS OF THE REVOLUTION OF INDEPENDENCE] (1977).]
sent in the United States: republican, democratic, federal, presidential, and bicameral.

If in the scope of Federalism, the Constitution of 1824 clearly favored the provinces, at that moment, very strong and independent, upgrading them to states.\(^\text{16}\) The state legislatures were given power to appoint the senators and to elect the President, the Vice President, and the justices of the Supreme Court, as well as the power to rule the electoral system for the federal and local elections. Concerning federal powers, the Congress was privileged over the Executive, concentrating on almost all the important decisions. The suspicion for a new autocratic attempt was present.

However, the most serious limitation to the Executive was the Vice-Presidential system, which was vested in the individual who received the second-most votes in the respective election. Therefore, the Vice Presidency was in the hands of the main rival to the President. Additionally, it gave the Vice President the chairmanship of the Council of Government (group of Representatives and Senators acting during the recesses of the Congress), which assured him a permanent presence in active politics.

There existed two major trends from the outset of the Republic. The first one sought the organization of the Republic through the federal system, the separation of powers, the recognition of human rights, and the extension of political participation. The other trend present was engaged in the preservation of the real powers dominant during the colonial times, the criollo\(^\text{17}\) oligarchy, the Catholic Church, and the Army. The political arena was a confused society, as it was alien to the controversies set forth, ethnically and socioeconomically stratified, poor and illiterate in the great majority, and with the heavy burden of three centuries of authoritarian colonial regime and the spiritual domination by the intolerant dogmatism of the Catholic Church. The middle class was very small. The number of political actors was limited and their political positions inflexible.

The republican democratic institutions lasted only until the second presidential election. The losing candidate alleged fraud, in-

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16. [Editor's Note: Dr. Gamas provided the following objective sources for a reader seeking to expand his or her base knowledge of Mexican federalism and the first Mexican Federal Republic: Nettie Lee Benson, La Diputación Provincial y el Federalismo Mexicano [The Provincial Delegation and Mexican Federalism] (1955); Michael P. Costeloe, La Primera República Federal de México [The First Federal Republic of Mexico] (Spanish ed. 1975).]

17. The descendants of pure Spanish blood born in Mexico and inheritors of their parents' fortunes, but deprived from political participation.
cited a popular revolt in the capital city, and gained recognition. He was deposed later by a military coup led by the Vice President.

Henceforth, the people were constantly manipulated to revolt. The number of rifles, not of votes, won elections and was the only judge of the performance of each government. The permanent conflict between liberals and conservatives, labeled in terms of their respective institutional designs as "federalists" or "centralists," was intermittently and temporarily resolved in favor of one or the other, always by the force of arms.

From 1833 to 1857, the triumph was conservative, except for a brief liberal interregnum in 1847, which resulted in the constitutions of 1836 and 1843.

The Constitutional Laws of 1836 established a normative morass with respect to the integration of the public powers. These laws aimed to maintain the control of the criollo oligarchy and establish equilibrium between all the real powers in order to avoid conflicts derived from internal divisions. To vote and to be a candidate for any office, a minimum income and level of culture was required. Only the Chamber of Deputies was elected in this manner. Insofar as the President was concerned, the rules revealed a profound suspicion with respect to the granting of powers. The election of the President was carried out by both chambers, the High Court of Justice, and the department committees. The balance of power favored the Congress.

This time, the real problem was the creation of the Supreme Conservative Power, a "super branch" that was set to make sure that the actions of those who integrated the three traditional ones conformed to the supreme law. This attempt to achieve an unbounded political control destabilized the entire system.

The "Organic Basis" of 1843 created a constitutional structure around the Executive. The strengthening of the presidential institution can be explained by the dominance of national politics at that time by Antonio López de Santa Anna. The text was tailored to satisfy his autocratic ambitions.

The Reform Act of 1847 resulted from a liberal triumph in the midst of military defeat in the war against the United States and reestablished the Constitution of 1824 with indispensable

18. [Editor's Note: Dr. Gamas provided the following objective source for a reader seeking to expand his or her base knowledge of Mexican conservatism: 2 ALFONSO NORIEGA, EL PENSAMIENTO CONSERVADOR Y EL CONSERVADURISMO MEXICANO [CONSERVATIVE THOUGHT AND MEXICAN CONSERVATISM] (1972).]
These changes included the abolishment of the Vice Presidency and establishment of a constitutional defense as judicial control via the amparo and through reciprocal political control of laws from the Federal Congress and the state legislatures. The elected President could hold office for the constitutional term.

When the war with the United States concluded, Santa Anna returned in 1852 and established a dictatorial regime.

The Constitution of 1857 was the outcome of a revolution against Santa Anna’s dictatorship. Its enforcement was interrupted by a three-year war waged by the Catholic Church and the conservatives against the secular State that the new Constitutional regulation had established. The liberal armed triumph was immediately altered by the French invasion and the establishment of the empire of Maximilian of Habsburg, who was chosen as the Emperor of Mexico in a compromise between the defeated conservatives and French Emperor Napoleon III.

The Constitution of 1857 was not fully in force until 1867. A remarkable political class took over and started to carry on a liberal economy, political freedom, and democratic practice. The Constitution reveals the full agreement between the then-members of the Constitutional Convention to avoid the autocratic government. It tied the legitimacy of Congress and that of the President to popular election with universal suffrage. The Legislative was strengthened, nearly placing the Executive in subordination. The Congress was composed by a single chamber with

19. [Editor’s Note: Dr. Gamas provided the following objective source for a reader seeking to expand his or her base knowledge of Mexican liberalism: 3 JESÚS REYES HERÓLES, EL LIBERALISMO MEXICANO [MEXICAN LIBERALISM] (1957).]

20. [Editor’s Note: Dr. Gamas provided the following objective source for a reader seeking to expand his or her base knowledge of the events leading to the Constitution of 1857: ZARCO, HISTORIA DEL CONGRESO EXTRAORDINARIO CONSTITUYENTE 1856-1857 [HISTORY OF THE EXTRAORDINARY CONSTITUENT CONGRESS 1856-1857] (The Sch. of Mex. reprint 1956).]

21. The French invasion favored by Mexican conservatives was the result of a very erratic political calculation: the intention was to take advantage of the Mexican internal instability and create a European monarchy in the American continent to balance the power of the “two republics” that will result from the American Civil War. Napoleon III bet on the South victory. The experiment had a fatal outcome. The French faced an unexpected Mexican resistance (the first “guerrilla war” in history) and the final victory of the Union. Facing the Prussian menace, the French retreated. Maximilian of Habsburg, Emperor of Mexico, was judged and executed by the Mexican government of Benito Juárez, who successfully led the resistance. This conflict is a very important chapter in the history of our continent.

22. [Editor’s Note: Dr. Gamas provided the following objective source for a reader seeking to expand his or her base knowledge of the Constitution of 1857: IMER B. FLORES, LA CONSTITUCIÓN DE 1857 Y SUS REFORMAS A 150 AÑOS DE SU PROMULGACIÓN [THE CONSTITUTION OF 1857 AND ITS REFORMS TO 150 YEARS OF ITS PROMULGATION] (2007).]
powers of a legislative and financial nature and to approve actions by the Executive in considerable number and importance. Two periods of ordinary sessions were established, the first of which could be protracted. During the recess, a Council of Government was created, made of one representative for each state or territory. The application of such provisions kept the Congress permanently in session.

Additionally, the President was deprived of the veto, limiting him to simple observations of the bills.

President Juárez clearly manifested his opposition to such subordination, which made carrying out government tasks considerably difficult. In the face of constant uprisings by the popular regional caudillos, warlords who had been elevated and strengthened as a result of the past two military conflicts, it was necessary to govern the states under the regime of “suspension of bill of rights,” established in the Constitution, and according to its rules and limitations for almost 10 years after the restoration of the Republic.

The reforms of 1874, promulgated by President Lerdo de Tejada, introduced a bicameral legislature and restored the presidential veto.

The unrest of the states was permanent. Five years later, in 1879, a revolt initiated at Tuxtepec by the popular general Porfirio Díaz, hero of the War of French Intervention, succeeded and installed a regime that lasted 30 years.

Díaz formally respected the Constitution of 1857, but exercised autocratic power. His regime achieved peace, political stability, and unprecedented growth of the overall economy. He disregarded the unequal distribution of wealth, the social immobility, the abuses of landowners, the desperate situation of peasants in the haciendas, and the demands of urban workers. As a result, the system was closed in benefit of a new formed aristocracy, with the exclusion of some provincial bourgeoisie and a new generation of young middle-class professionals.

The necessary conclusion of all the preceding is that the strong presidency in Mexico was never due to a constitutional recognition. It appeared, until the last decades of the nineteenth century, as a “meta-constitutional phenomenon” as a result of a turbulent and disorderly political life. No constitution, except that of 1843, granted excessive powers to the President. Moreover, all of them tried to measure the allocation of powers to the Executive to avoid the recurrent tendency of an autocratic government.
It was not the absence of an adequate normative scheme that produced instability. Rather, this was caused by the political, economic, and social circumstances of Independent Mexico, where the authoritarian colonial heritage, the defense of the traditional interests and privileges, the incipient development of the middle classes, and the extreme economic, ethnic, and social inequalities made impossible the establishment of the constitutional state and institutions.

III. PRESIDENT-PARTY SYSTEM

The term *presidentialism* has been fashioned to refer to the enormous power that the President accumulated in Mexico beginning in 1929, when the National Revolutionary Party was founded, until 2000, when its inheritor, the Institutional Revolutionary Party (PRI), lost the federal election.\(^{23}\)

The system was defined in the treaties of political science with a variety of labels: semi-democracy, soft dictatorship, mild authoritarianism. We prefer the neutral qualification of President-Party, which fits better describing the reality of the separation of powers.

The Constitution of 1917 was the result of the Revolution that occurred at the beginning of the twentieth century. In fact, there were two consecutive armed conflicts: the political one initiated by Francisco Madero in 1910, and the major political and social revolt led by Venustiano Carranza in 1913.

The first revolutionary movement overthrew the dictatorship of Porfirio Diaz and achieved the election of a democratic government. But President Madero, with excessive democratic zeal, did not create a strong government, compromised with the economic and political forces of the vanquished regime, neglected the social changes sought after by the revolutionaries and provoked many of them to withdraw their support. Finally, he was deposed after almost a year by a military coup.

The second movement was an uprising against the new dictatorship. This revolt gathered an important segment of the bour-
geoisie, organized peasant groups and active members of the growing middle class.

The outcome was the call of a constitutional convention, whose members rejected the concentration of power, either in the executive or in the legislative, while trying to reinforce the former, which had a diminished role in prior constitutions. For this reason, the characteristic balances of the presidential system and the principle of no reelection for the President of the Republic were established. The Constitution completed the traditional bill of rights with agrarian and labor reforms and the national property of natural resources. It also contained hard provisions against the Catholic Church for its support of the counter-revolutionary movements.

The aftermath of the revolution was not very promising in reaching the purposes constitutionally stated.

The first elected president, Venustiano Carranza, was assassinated, and the power held by a group of caudillos that emerged from the petty bourgeoisie of the northern state of Sonora was led by Álvaro Obregón and Plutarco Elías Calles, who were successively elected presidents. The political control of the provinces was mostly in the hands of the revolutionary chiefs, and the peace was precarious. Notwithstanding such events, the presidential authority was affirmed, and the basis for the modernization of the country was set up: the central bank was founded, and with it, the basis for a financial system, so far inexistent; irrigation programs started, lands for commercial agricultural and agrarian reform was carried slowly and at a prudent pace; roads were built and education and health programs became successfully in force; the international conflicts, issued from the destruction of foreign property during the past years, were satisfactorily solved, and the new government gained international recognition.

Obregón achieved a constitutional reform in order to enable him to hold office for a second term. He won the election but did not assume office. In the midst of a conflict with the Church, a fanatic young Catholic militant prevented it. The magnitude of the elected President aroused the agitation of the armed leaders throughout the country. Again, rifles, not votes, determined the nation's direction.

Incumbent President Calles summoned the strongest and most prestigious warlords and achieved an agreement to give the presidential succession the solution provided for in the Constitution (appointment of a provisional President by the Congress and call for an election). A National Revolutionary Party (PNR) was
founded as a compromise among those who exercised real power to institutionalize political life, giving each participation in the decision process and fulfilling his demands in a satisfactory manner. It was initially a party of "groups" and "notables." There was no power in Mexico other than armed force, and no political solution different than the agreement among those who held it.

The Party dominated Mexico's political life until the 2000 elections. At first controlled by Calles, who maintained real power until 1938, the Party then acknowledged the President of the Republic as its only leader. Its denominations, corresponding to the different stages in its development and purpose, were successively National Revolutionary Party, Party of the Mexican Revolution (PRM), and Institutional Revolutionary Party (PRI).

Since its inception, the principle of no reelection was constitutionally reestablished. The election of Presidents was held at the regular intervals, every six years, as provided by the Constitution.

The President centralized real power at the federal, state, and local levels. Each office holder of the Executive exercised unquestionable authority during the six years of his constitutional tenure.

The party of notables was transformed by President Lázaro Cárdenas into a party of masses supported by labor, peasant, and middle-class organizations, with each being created from the centers of authority. It changed its denomination to the Party of the Mexican Revolution. At the time, the spontaneous and independent organization of workers and peasants was minimal, weak, ideologically divided, and prone to use violence. The new, semiofficial organizations allowed for the progressive exclusion of the military chiefs as a political force; the former revolutionary militias gave way to the professional army. A generation of officers, with a new mentality, was groomed in military schools. The army transformed into a loyal and powerful arm of the political system.

In Mexico, militarism in the Latin American style was unknown in the twentieth century. Also absent were altercations among political parties and the democratic interregnums that took place in the rest of Ibero-America.

The requirements of economic development, as the population grew at a high rate, accelerated centralization.

The principle of no reelection was respected, and the President in turn acquired the indisputable leadership of the party. From 1934 until 2000, every President fulfilled his six-year term.

The Party controlled elections at the national, state, and municipal levels. The candidates for governors, federal representa-
tives, and senators were selected by the President. Corrupt elec-
toral practices were frequent; however, many times were unneces-
sary, given that the Presidential-Party system acquired legitimacy
as the country reached peace, stability, economic progress, and
social benefits in health, education, and social security. Total dis-
cipline, as well as respect for final decisions, was generated inter-
nally; pluralism of opinion was permitted within the party and
negotiations were normal. Once a decision was made, it was to be
carried out.

From 1934 to 1940, the six years of President Lázaro Cárdenas’s
reign of power, the social pressures of peasants and workers be-
came irresistible. The reforms that were contemplated in the
Constitution were carried out; there was a division of the large
estates and agrarian grants, organization and encouragement of
labor demands, improvement of workers and freedom to strike,
programs of laic education and finally oil nationalization. These
measures alarmed the bourgeoisie, who organized Catholic move-
ments and founded the National Action Party (PAN). PAN was a
true institutional opposition that decided to act within the legal
framework, and in doing so, legitimized the system against which
it never spared criticism.

Cárdenas handed over power, in a pragmatic turnover, to a con-
servative, Manuel Ávila Camacho, revolutionary chief, moderate
and Catholic.

Camacho proclaimed national unity, looked for the moderation
of social demands, withered away agrarian reform and labor
movements, and acted in a conciliatory manner. Taking advan-
tage of the opportunities presented by the World War, he started
an economic development policy based on import substitution,
which would later be theorized and promoted by the Economic
Commission for Latin America, an organ of the United Nations.
The denomination of the party was changed to Institutional Revo-
lationary Party. It was concluded that the revolutionary objec-
tives of social justice were accomplished; “institutions” were now
the national task.

The rule that every President elects his successor was estab-
lished and respected. Once the newly elected President took of-

The best years of the system were from 1940 to 1970, three dec-
ades of continuous economic growth at almost 6% per year.

The strengthening of the central authority invalidated the fed-
eral structure and the independence of Congress and of the states.
The President used the structure of the party.
The system was founded on a novel combination of authoritarian imposition (moderate in the use of force) with a search for legitimacy, found with respect to the individual, not political, rights, as well as the opening of the party and from the whole political system to diverse social groups. The recruitment of new elements was promoted, and a political class groomed.

In the workers and peasants organizations, the leaders were co-opted in or even promoted and imposed. Their performance was rewarded with seats as representatives and senators, and a rewarding political career could continue.

Labor negotiations always sought to increase real wages without curbing firms’ margins of revenue. Economic growth allowed it.

The press and the media were controlled.

The party proclaimed itself “revolutionary” and developed an ideology of social progress. But it was always pragmatic and conformed its principles to what the circumstances required. That adaptation led to alternating conservative or revolutionary attitudes.

The party always postulated social justice but was clearly anticommunist. Moreover, even though in political discourse the excesses of capitalism were condemned, private enterprise was favored, although it was balanced with indispensable social measures and a strong range of public companies. Many of them were seized by the state after private owners led them to bankruptcy.

The Party was the fundamental tool of the system for the articulation of the enormous quantity of interests that arose in the Republic, dealing with formally organized and informal groups. The negotiation processes were a permanent task. The management of demands was sponsored by the hierarchal structure at the national level. The governors were the natural leaders of the party in their respective states, even though the central authority of the Party always sent a “delegate” to facilitate the communication with the central organs of power and serve as a “counterweight.” Differences were always resolved “in the family.”

Another mechanism the system used to articulate interests was the public administration. If, at the beginning, it was merely a bounty for the victors early on, some sectors developed technically, including basically hydraulic engineering, communications, and finance. The bureaucracy was transformed into one of the pillars of the system, maintaining a discreet attitude at the beginning to finally dominate the political apparatus. The “candidate” for the next Presidency was always a secretary of state in the outgoing
administration, starting with President Luis Echeverría, although he had not previously held elective office but was groomed in a career within the federal bureaucracy.\textsuperscript{24} The next four presidents of Mexico belonged to the financial sector of the government. The traditional politician was eclipsed and gave way to the technocrat. This "takeover" originated the separation in 1988 of an important group of politicians within the PRI and their later foundation of the third party in Mexico today, the Party of the Democratic Revolution (PRD), which attracted the entire left.

Population growth coincided with the decline of the closed economic system based on the program of import substitution, which fostered an overprotected industry directed toward the internal market, favored with low prices for energy and agricultural products in detriment of rural conditions.

Recurrent economic crisis was a result not only of internal mismanagement but also of global problems that caused damages felt by a growing and ever more educated middle class, whose demands were not satisfied. The manifestations of restlessness were independent movements of railway workers, teachers, medical doctors, and employees from official institutions and students. They were repressed through the incarceration of their leaders. The use of force was rather moderate.

The loss of legitimacy of the old system became obvious since the tragic occurrences of 1968, when the brutality in the repression of protests traumatized the country. It was hastened during the six-year terms of 1970–1976 and 1976–1982, due to the economic crisis and its consequences, including the severe adjustments that were required by necessity in the following six-year term.

Movements by part of the provincial bourgeoisie arose, first at the level of cities (San Luis Potosí, Chihuahua, Guanajuato) and later of states, headed by local leaders that demanded greater participation, free expression of the vote, and respect for the results of the local elections. The National Action Party, traditionally pro-business and Catholic, was strengthened by this new force.

However, the PRI was able to win three of the following elections, each time with a less margin advantage of the vote.\textsuperscript{25}

\textsuperscript{24} President Luis Echeverría served as President from 1970 to 1976.

\textsuperscript{25} The second election was contested.
IV. THE "TRANSITION"

In Mexico, the transition from an authoritarian to a democratic regime was achieved by a process of successive constitutional reforms that took place in the measure that political demands for changes did not admit postponements.

In 1963, with electoral triumphs of PRI on all fronts, federal, state, and municipal, an omnipotent national presence was revealed that seemed increasingly unbelievable and disheartening for the ranks of the opposition. In addition, "party representatives" were created in accordance with voting percentages, fostering the entry into the Lower Chamber of a limited number of opposition members.26

In 1977, the system of proportional representation was introduced as a complement to the majority one in composition of the Chamber of Deputies.

Successive reforms in 1977, 1983, 1990, 1993, and 1996 definitively opened up the system to the opposition; they established the organization and surveillance of elections by an autonomous agency complemented with an electoral justice system; set rules for public financing of the political parties and regulating their practices; elevated the Federal District to a status of semi-autonomy with elected legislature and government; granted judicial controls over the Executive and Legislative, and complemented the control of constitutionality with a system of judicial writs to resolve conflicts between federal, state, and municipal powers and authorities.

In 1989, the first opposition governor was elected and took office.

The opposition parties acceded to the Congress, and the process of organizing clear and clean elections advanced. Although Presidentialism was severely criticized, unipersonal authority was not immediately challenged because the holders of the Executive accepted dialogue concerning the reforms and carried them out. Nothing of the design of the new relationship among powers was discussed. "Reform of the State" was not addressed until much later by the political parties.

The reforms in the final stage were promoted by strong individual personalities: Cuauhtémoc Cárdenas Solórzano, and Porrírio Muñoz Ledo (PRD) and Diego Fernández de Ceballos (PAN).

26. The limited number of opposition members were mostly PAN militants.
These reforms were accepted by Presidents Carlos Salinas de Gortari and Ernesto Zedillo Ponce de León. Both exercised “authoritarian presidentialism” to obtain the docile acceptance of the PRI at federal and state levels, in such a way that the Constitution could be reformed.

In 1997, the PRI lost the majority and the control of the Chamber of Deputies. A member of the opposition was elected as Chief of Government of the Federal District. The vote against the PRI in the capital of the Republic was overwhelming. Politically and doctrinally, inside and outside Mexico, the “democratic transition” was announced, a label that by then had been coined by Political Science and Constitutional Law.

The reforms benefited the political parties more than a civil society prone to massive rallies in protest or support. They resulted in deficient constructive organizational capacity and in which the enormous socioeconomic inequalities and profound ideological divisions, whose roots steeped in the past seemed forgotten, became obvious.

The political parties were thus the great generators and winners of the political change. The Constitution gave them public subsidies, the monopoly of candidacies for office, the exclusivity of using media during their campaigns and the exclusive right to seek an action of unconstitutionality against electoral laws. Finally, they are gaining influence on the autonomous agency in charge with elections.

V. PRESIDENT-CONGRESS

The Constitution of 1917 attempted to create a balance between the Congress and the Presidency through the classic “check and balances.” The recent reforms have resulted in an increase of the Congress powers.

A. Balances

1. Intervention by the President in the Legislative Process

The President has the power to send bills to the Congress to be enacted as laws or decrees; he shares that power with deputies and senators and the state legislatures.  

27. MEX. CONST. art. 71, § 1.
He has power to reject in full or in part any bill, and return it to the chambers with the respective corrections. This “veto” can be overridden if the original text is confirmed by two-thirds of the total number of votes of each chamber, in which case it will be returned to the Executive to be published.\textsuperscript{28}

2. \textit{Extraordinary Powers to Legislate}

This situation arises in three cases:

\textit{i. Suspension of Human Rights}

In the face of invasions, serious disturbance of public peace, and any other situation that puts society in grave danger or conflict, the President has the power, with the consent of the secretaries of state departments, the directors of administrative departments, and the attorney general, and with the assent of Congress, to suspend in the whole country or in a specific location those human rights which respect can slow a rapid and easy response to the situation.

Once human rights have been suspended, Congress may grant the authorizations it considers necessary for the Executive to face the situation.

In these cases, the Executive acquires legislative powers. This provision (Article 29) only came into effect once—as a result of Mexico’s entry into the Second World War.

\textit{ii. Export and Import Tariffs}

Congress can provide the Executive powers to raise, increase, diminish, or suppress quotas or tariffs for export and import previously established by the same Congress and further to restrict imports, exports, and the transit of commodities.\textsuperscript{29}

\textit{iii. Health Emergencies}

The General Health Council that depends on the Presidency has the power to emit obligatory provisions of a general character in case of epidemics.\textsuperscript{30}

\textsuperscript{28} \textsc{Mex. Const. art. 72, §§ A-C.}
\textsuperscript{29} \textsc{Mex. Const. art. 131.}
\textsuperscript{30} \textsc{Mex. Const. art. 73, § XVI.}
3. **Duty to Inform**

The Constitution establishes, in some cases, the duty of the Executive to inform the Chambers.

i.) At the opening of the first period of sessions of the Congress, the President is due to present a state of the union report in writing.\(^{31}\)

ii.) The secretaries of state departments and heads of administrative departments, once the period of ordinary sessions is open, are due to report to Congress the state of the respective areas under their jurisdiction.\(^{32}\)

iii.) Either of the chambers can summon the secretaries of state departments, the Attorney General of the Republic, the heads of the administrative departments, as well as the directors of the federal agencies or public-owned firms, to provide information when a law or a business concerning their respective areas is under discussion.\(^{33}\)

iv.) Either of the chambers, by request of a fourth part of their members, in the case of deputies, and of a half, in the case of senators, can create commissions to investigate the performance of said state agencies or public-owned firms. The results of the investigations will be made available to the Executive.\(^{34}\)

v.) The Secretary of the State in charge of the Treasury Department is due to appear annually before the Chamber of Deputies to present the projected budget and the bill of the Law of Revenue submitted by the President.\(^{35}\)

4. **Financial Acts**

The Constitution orders the necessary approval of the Chamber of Deputies (Article 74, fraction IV) for the annual budget and for the annual accounts. That of the Congress is required for the passing of the Law of Appropriations,\(^{36}\) for the terms and the man-

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31. MEX. CONST. art. 69.
32. MEX. CONST. art. 93, as amended, D.O. (Jan. 1, 1974; Dec. 6, 1977).
33. Id.
34. Id.
35. MEX. CONST. art. 74, § IV.
36. MEX. CONST. art. 73, § VII.
agement of the debt contracted by the Executive, for its payment, and for supplemental budgets.

5. Congressional Control Over Other Executive Acts

Other powers of the Executive are also subject to control.

i.) The Executive is the conductor of international policy. However, it cannot declare war without a previous law from the Congress. On the other hand, the treaties signed by the Executive are not valid without the approval of the Senate. Additionally, the Executive is required to send troops outside the country’s borders, to authorize the entry of foreign troops into the national territory, and for the stationing of ships from another power for more than a month in Mexican waters.

The Senate has the power to analyze the Executive’s foreign policy.

ii.) The Executive requires the approval of the Senate to transfer the National Guard outside of its respective states.

iii.) The Executive requires the approval of the Senate for certain appointments: Attorney General, diplomatic agents, general consuls, high-ranking Treasury officials, coronels and other high-ranking officers in the National Army, Navy, and Air Force, and the members of the board of the Central Bank.

In certain cases, the Executive makes the proposition and the Senate appoints: Justices of the Supreme Court of Justice, provisional governor in the event that the constitutional powers have disappeared in a state, judges of the

37. MEX. CONST. art. 73, § VIII.
38. MEX. CONST. art. 126.
39. MEX. CONST. art. 89, § X.
40. MEX. CONST. art. 89, § VIII; MEX. CONST. art. 73, § XII.
41. MEX. CONST. art. 89, § X; MEX. CONST. art. 76, § 1, as amended, D.O. (Feb. 12, 2007).
42. MEX. CONST. art. 76, § III.
43. MEX. CONST. art. 76, § I.
44. MEX. CONST. art. 89, § IV.
45. Id.
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tribunals of agrarian justice, and the substitute in the case of removal of the Chief of Government of the Federal District. 46

6. Political Powers of the Senate

As a federal chamber, the Senate has some powers that are merely political and affirm its position in face of the President:

i.) Declare, when the powers of a state have disappeared, that it is necessary to appoint a provisional governor. 47

ii.) Appoint the provisional governor in the previous case, under the proposal of the President unless the state's constitution provides a provision to solve such a situation. 48

iii.) Resolve the political controversies that arise among the powers of a state when one of them requires the Senate to intervene with that purpose or when, as a result of such controversies, the constitutional order has been interrupted by an armed conflict. 49

iv.) Remove from office the Chief of Government of the Federal District for a behavior that affects the relations with the Powers of the Union or the public order in the Federal District. 50

7. Impeachment Power of the Chambers

The chambers have the power to authorize criminal procedures when a public servant is accused of grave conduct so sanctioned. Also, the chambers may judge him politically in the cases that the Constitution establishes, always for a grave violation of the Constitution. 51

The President, during his term of office, can only be accused of treason and grave crimes. 52

47. MEX. CONST. art. 76, § V.
48. Id.
49. MEX. CONST. art. 76, § VI.
51. MEX. CONST. art. 74, § V; MEX. CONST. art. 76, § VII.
52. MEX. CONST. art. 108.
B. Presidential Powers Excluded by Recent Reforms

The recent constitutional reforms have deprived the Presidency of some of the powers acquired during the dominance of the President-Party system.

1. Electoral Reforms

The participation of the Executive in the organization of elections has been excluded and an autonomous agency was created for that purpose, the Federal Electoral Institute.\(^53\)

A system of electoral justice was established to resolve conflicts that formerly were submitted to presidential arbitration.\(^54\)

2. Restructuring the Legislature

The new structure of the Chamber of Deputies, through the introduction of the proportional representation, the reduction, through limits, in the number of representatives that can belong to a single party, the new composition of the Senate with minorities, and as a consequence the difficulty to attain majority and the impossibility of passing a constitutional reform by the representatives that belong to a single parliamentary group, have weakened the Presidency.\(^55\)

The structural reforms of Congress established two periods of sessions (larger legislative presence) and the extension of the powers to summon administrative officers to reinforce the presence of Congress, even if no political responsibility can be derived.\(^56\)

The strengthening of the Senate has been bolstered, adding its approval to appointments made by the President and with the designation of others under proposal from the Executive.

3. Other Reforms

i.) The semi-autonomous status given to the Federal District and the direct popular election of the Chief of Gov-


\(^{56}\) See supra note 55; see also MEX. CONST. art. 93, as amended, D.O. (Jan. 31, 1974; Dec. 6, 1977; Dec. 31, 1994; Aug. 15, 2008).
ernment and of the local assembly deprived the President of an appointment that previously was his prerogative and creates a strong autonomous entity in the view of federal powers.\textsuperscript{57}

ii.) The President is no longer the supreme agrarian authority in the country, as the agrarian reform was declared finished. His direct traditional relationship with the peasant sector is thus weakened.\textsuperscript{58}

iii.) The statute of autonomy recognized to the religious organizations and the elimination of the intervention that the Constitution permitted to the Executive in this critical sector solidifies the social and political position of the religious system.\textsuperscript{59}

iv.) The creation of the National Commission for Human Rights sets up effective limits on the abusive activities of the administration.\textsuperscript{60}

v.) The ratification by the Senate of the Attorney General limits the power of "absolute confidence," traditionally recognized by the President in the appointment of the person who held that position.\textsuperscript{61}

vi.) The establishment of the autonomy statute for the Bank of Mexico deprives the Executive of the monetary policy.\textsuperscript{62}

vii.) Congress and states have the power to act during constitutional controversies, eventually subjecting the decisions of the Executive to the Judicial Power.

viii.) The constitutional powers allocated to public administration have been reduced in the measure that the government has diminished the number of state firms by selling them to private owners as a matter of economic policy.

\textsuperscript{57} MEX. CONST. art. 122, as amended, D.O. (Oct. 25, 1993; Dec. 31, 1994).
\textsuperscript{58} MEX. CONST. art. 27, as amended, D.O. (Jan. 6, 1992; Jan. 28, 1992).
\textsuperscript{59} MEX. CONST. art. 130, as amended, D.O. (Jan. 28, 1992).
\textsuperscript{61} MEX. CONST. art. 101, § A, as amended, D.O. (Dec. 31, 1994).
The powers in economic matters have been reduced in the measure that the Federal Government allows for a freer operation of the markets, as the international economic environment requires and reduces the intervention to which it has been provided under the Constitution.

Most importantly, the present regime, with the strengthening of the opposition parties, has whittled away the informal source of power that the Executive had: the leadership of a dominant party through which active political life was centralized in his indisputable leadership.

The Presidency has lost his "metaconstitutional" powers.\textsuperscript{63}

C. **Exclusive Powers of the President**

The President has preserved powers in exclusivity:

i.) Legislative initiative and veto.\textsuperscript{64}

ii.) Publication and enforcement of laws.\textsuperscript{65}

iii.) Issue of bylaws.\textsuperscript{66}

iv.) Free appointment of the secretaries of state departments,\textsuperscript{67} one of the Counselors of the Federal Judicial Board,\textsuperscript{68} and other officials whose appointments are not predetermined in another way in the Constitution or in the laws;\textsuperscript{69} as well as the public servant who is in charge of command of the public force in the Federal District,\textsuperscript{70} although the last requires de facto coordination with the Chief of Government.

\textsuperscript{63} Metaconstitutional powers are the political powers that the President exercised as the leader of the dominant political party that allowed him to "appoint" governors, representatives, and senators in a nominal federal system.

\textsuperscript{64} MEX. CONST. art. 71.

\textsuperscript{65} MEX. CONST. art. 89, § I.

\textsuperscript{66} Id.

\textsuperscript{67} MEX. CONST. art. 89, § II.

\textsuperscript{68} MEX. CONST. art. 100.

\textsuperscript{69} MEX. CONST. art. 89, § II.

v.) Use of the armed forces for internal security and external defense of the Federation.\textsuperscript{71}

vi.) Direction of foreign affairs.\textsuperscript{72}

vii.) Heading of the public administration.\textsuperscript{73}

viii.) Expulsion of undesirable foreigners.\textsuperscript{74}

In accordance with the laws of Congress, it may contract debts, take charge of public education, and grant pardons for crimes in the jurisdiction of the federal tribunals.\textsuperscript{75}

VI. JUDICIAL CONTROL OF CONSTITUTIONALITY

The new judicial institutions that complete the system of constitutional control give the Supreme Court of Justice a relevant role in the separation of powers. The traditional "juicio de amparo," a positive protection of human rights, is now under the jurisdiction of Circuit and District Courts.\textsuperscript{76}

A. Constitutional Controversies

1. Concept and Origin

Article 105 grants exclusive powers to the Supreme Court of Justice to resolve constitutional controversies that arise between:

i.) The Federation and a state or the Federal District;

ii.) The Federation and a municipality;

iii.) The Federal Executive Branch and the Congress of the Union; the former and either of the Chambers of the latter, or in its case, the Permanent Commission;

iv.) A state and another state;

v.) A state and the Federal District;

\textsuperscript{71} MEX. CONST. art. 89, § VI.
\textsuperscript{72} MEX. CONST. art. 89, § X.
\textsuperscript{73} MEX. CONST. art. 90.
\textsuperscript{74} MEX. CONST. art. 33.
\textsuperscript{75} MEX. CONST. art. 73, § VII; MEX. CONST. art. 3; MEX. CONST. art. 89, § XIV.
\textsuperscript{76} MEX. CONST. art. 105, as amended, D.O. (Dec. 31, 1994).
vi.) The Federal District and a municipality;

vii.) Two municipalities located at different states;

viii.) Two powers within a State in disagreement about the constitutionality of their actions or general provisions;

ix.) A state and one of its municipalities, in disagreement about the constitutionality of their actions or general provisions;

x.) A state and a municipality located in a different state, in disagreement about the constitutionality of their acts or general provisions;

xi.) Two organs of government in the Federal District, in disagreement about the constitutionality of their acts or general provisions.\textsuperscript{77}

Where political conflicts are concerned, the intervention of the Supreme Court of Justice cannot take place, as it is alien to its functions as a court of law. They are reserved to the Senate.\textsuperscript{78}

Controversies issued from electoral matters are expressly excluded from the knowledge of the Supreme Court of Justice.

There has been a tradition in Mexico of avoiding electoral matters to be decided by the Judiciary, in order to keep it away from political debate and involvement. The new Mexican electoral system has changed this focus with the setting up of an electoral justice through an autonomous and specialized court that is an integral part of the Federal Judicial Power but that acts independently.

The definition of “electoral matters” is established in Article 99:

i.) The appeals issued in the federal elections of deputies and senators.

ii.) The appeals issued in the election of the President.

The High Court undertakes the final counting of votes for the election of the President once all challenges and appeals have been resolved and proceeds to issue the declaration of validity of the election and that of the

\textsuperscript{77} Id.

\textsuperscript{78} MEX. CONST. art. 76, §§ V & VI.
President Elect with respect to the candidate that has obtained the majority.

iii.) The appeals against actions and resolutions of the federal electoral officers which are different from those set forth in the preceding paragraphs, which violate constitutional or legal norms.

iv.) The appeals against definitive actions and resolutions of the authorities of the states in charge with organization and decision on the elections or to resolve the controversies issued in state elections that have been a definite factor in the development of the respective process or in the final result of the elections.

v.) The appeals against actions and resolutions that violate the political rights of the citizens to vote, be elected and to enjoy freely and peaceful affiliation to participate in the political affairs of the country.

vi.) The labor conflicts or differences between the Electoral Tribunal and its employees.

vii.) The labor conflicts or differences between the Federal Electoral Institute and its employees.

viii.) The determination and imposition of sanctions for electoral wrongdoings.\footnote{MEX. CONST. art. 99, as amended, D.O. (Nov. 13, 2007).}

The Electoral Tribunal acts through a High Central Court and regional courts.

The Electoral Magistrates that integrate the Superior and regional courts are elected by the vote of two-thirds of the members present in the Chamber of Senators (or by the Permanent Commission during Congress recesses) from nominations proposed by the Supreme Court of Justice.\footnote{Id.}

The principle of the Supreme Constitutional Tribunal of the Supreme Court of Justice is reaffirmed. Also, in electoral matters:

Whenever a court of the Electoral Tribunal sustains a thesis with respect to the unconstitutionality of some act or resolution or with respect to the interpretation of a precept of the

\footnote{MEX. CONST. art. 99, as amended, D.O. (Nov. 13, 2007).}
\footnote{Id.}
Constitution and said thesis can be contradicted by one sustained in Federal Courts or the Plenary Session of the Supreme Court of Justice, any of the Justices, the Courts or the parts, can denounce said contradiction, in the terms set forth in the law, so that the Plenary Session of the Supreme Court of Justice of the Nation definitively resolves which thesis should prevail. The resolutions that are dictated in this instance will not affect previously resolved matters.\textsuperscript{81}

2. Effect of the Resolutions

The resolutions of the Supreme Court in constitutional controversies will, in principle, have effect only with respect to the parties in the controversy.\textsuperscript{82}

However, they can have general effect if two conditions are accomplished:

i.) If the controversies have origin in general provisions (either laws or bylaws) of the states and municipalities that are challenged by the Federation; of the municipalities challenged by the states; between the Executive power, Congress of the Union, one of its Chambers or the Permanent Commission; between the powers of the same state with respect to the constitutionality of their actions or general provisions or between the organs of government of the Federal District with respect to the constitutionality of their actions or general provisions, and

ii.) If the resolution of the Supreme Court of Justice that declares them invalid is approved by a majority of at least eight votes.\textsuperscript{83}

In this way, the resolution of unconstitutionality does achieve \textit{erga omnes} effects and can declare the invalidity of the provision of a general character subject matter of the controversy.

\textsuperscript{81} Id.
\textsuperscript{82} MEX. CONST. art. 99, as amended, D.O. (Dec. 31, 1994).
\textsuperscript{83} Id.
B. Actions of Unconstitutionality

1. Concept and Origin

The Supreme Court of Justice has powers to resolve cases issued from "actions of unconstitutionality."84 These are writs in favor of minorities that form part of the federal or state legislative branches against possible violations of the Supreme Law in norms of a general character approved by the majority. The same right was granted to political parties with respect to the electoral laws and to the Attorney General of the Republic.

They are defined as those that "have as a goal to resolve a possible contradiction between a norm of general character" and the Constitution.85

Those entitled to exercise the action are:

i.) Thirty-three percent of the members of the Chamber of Deputies of the Congress of the Union appealing laws passed by the Congress of the Union;

ii.) Thirty-three percent of the members of the Senate appealing laws passed by the Congress or international treaties celebrated by the Mexican State approved by the Senate;

iii.) The Attorney General of the Republic, against federal, state and Federal District, as well as international treaties celebrated by the Mexican State;

iv.) Thirty-three percent of the members of one of the state legislatures, against laws passed by the same organ;

v.) Thirty-three percent of the members of the Assembly of Representatives of the Federal District, against the laws passed by the same Assembly, and

vi.) The political parties registered before the Federal Electoral Institute, through their national chairmanship, against federal or local electoral laws; and the political parties with state registration, through their chairman-

85. Id.
ship, exclusively against electoral laws passed by the legislature of the state.\textsuperscript{86}

The only path to present nonconformity with the electoral laws of the Constitution is that addressed in this article. This right of action has been denied to the citizens.

2. \textit{Effect of the Resolutions}

The resolutions can achieve \textit{erga omnes} effects in accordance with the final paragraph of fraction II of Article 105.

The resolutions of the Supreme Court of Justice can only declare the invalidity of the challenged norms if they were approved by a majority of at least eight votes.\textsuperscript{87}

VII. AUTONOMOUS AGENCIES

The Constitution has created autonomous agencies that are characterized by:

- A specific jurisdiction constitutionally determined and specified by a relevant law.
- Internal autonomy in their administration and decisions, with independence from the traditional branches; they have legal personality, their own assets, and free administration of their budget.
- Their decisions are, as a rule, compulsory, although not in all cases, and subject to the system of protection of human and political rights that the Constitution establishes.
- Their chief officers are subject to the regime of accountability and responsibilities for public servants as the members of the traditional branches. They can be impeached.
- Their employees are subject to the labor regime of workers in the service of the state, as the rest of the traditional branches.\textsuperscript{88}

There are six existing agencies:

\textsuperscript{86} \textit{Id.}  
\textsuperscript{87} \textit{Id.}  
\textsuperscript{88} This regime is established in the articles that create each agency; those articles are referenced \textit{infra}.  

A. The Central Bank (Bank of Mexico)

Following a global trend, it was considered necessary to grant independence to monetary policy from political decisions that were in many cases irresponsible and a source of grave economic crisis. As a result, the independence of the Central Bank has been granted to maintain prices and stability in exchange rates.

The Central Bank is by constitutional provision autonomous in its operation and management. Its main objective is the stability of the purchasing power of the national currency. No authority has power to order the bank to grant financing.

Its functions range from coining and banknote issuing to regulating exchange rates, as well as banking and financial intermediation and services. Additionally, the bank has the necessary authority to undertake such regulation and provide for its observance.

The conduct of the bank is directed by a board of officers whose designation is made by the President of the Republic with the approval of the Chamber of Senators or of the Permanent Commission during its recesses. The President appoints one member of the board as Governor and the others as Deputy Governors. The Governor holds office for six years, and the Deputy Governors for eight. They can only be removed for grave cause established in the same law, by the decision of the Board of Governors, or by two of its members.

The decisions of the bank are compulsory.

The independence of the institution is a fact, and the conflict of views between price and exchange rate stability, which the institution takes care of, and the pressure for lax policies favoring economic growth that the President and the Secretary of the Treasury seek, occurs frequently.

The Bank, not the Executive, has control over monetary policy.

90. Id.
91. Id.
92. Id.
93. Id.
95. Id.
96. Id.
97. Id.
B. National Commission on Human Rights

An agency designated as the National Commission on Human Rights has been established to protect the human rights recognized by the Constitution from abusive behavior by administrative authorities.\textsuperscript{98}

The reasons for the creation of the Commission originated from a continuous and persistent criticism of the violation of human rights on the part of agencies belonging to the federal and state executives, which in the United States of America and the European Union were denounced as common and everyday actions by the "Mexican government."\textsuperscript{99} Violation of human rights in the administrative sphere is unfortunately frequent, especially by the police and the attorneys general's offices, particularly against the populations that have no economic means or judicial information. In response to this pressure, supported enthusiastically by nongovernmental organizations, the Commission was created and immediately so were its state sisters.\textsuperscript{100} The ombudsman, an institution of Scandinavian origin, was adopted.\textsuperscript{101}

The Commission has no jurisdiction in electoral, legislative, labor, or judicial matters.\textsuperscript{102}

The National Commission on Human Rights has a Consulting Council integrated by 10 councillors that are elected by the vote of two-thirds of the members present in the Chamber of Senators, or during its recesses, by the Permanent Commission with the same qualified vote.\textsuperscript{103}

The President of the National Commission on Human Rights, who will also hold that office with respect to the Consulting Council, is elected in the same terms as in the preceding paragraph.\textsuperscript{104} He holds office for five years and can be reelected only once.\textsuperscript{105}

The President of the National Commission on Human Rights will present a report on activities annually before the Powers of

\textsuperscript{98}. MEX. CONST. art. 102(B), as amended, D.O. (Jan. 28, 1992).
\textsuperscript{99}. It is impossible to elaborate on these abuses within the confines of this Article. For years, newspapers covered these matters, supporting their allegations with press releases from various state departments and nongovernmental agencies. Yet, these reports were rejected by the Mexican government, and the abuses were never proved. The matter is highly controversial.
\textsuperscript{100}. Taken as common knowledge by constitutional and criminal lawyers, this Scandinavian institution would be very difficult for a student to trace to its roots.
\textsuperscript{101}. See supra note 98.
\textsuperscript{102}. Id.
\textsuperscript{103}. Id.
\textsuperscript{104}. Id.
\textsuperscript{105}. Id.
the Union. For this report, he shall appear before the Chambers of the Congress.

The decisions of the Commission are simply "recommendations" and are not of obligatory observance. However, because of the diffusion they are given, they are effective pressure on the authorities.

C. **Universities and Institutions of Higher Education**

The precedent is the autonomy that the National University achieved in 1929.

The Constitution provides in Article 3 that the universities and other institutions of higher learning to which the law grants autonomy shall have the power and responsibility to: govern themselves; to carry out their goals to educate, investigate, and disseminate culture in accordance with the constitutional principles respecting the freedom of education and investigation, and the free examination and discussion of ideas; to determine their plans and programs; to decide on the terms of hiring, promotion, and permanence of their academic personnel; and to administrate their own assets.

Each law establishes in particular the corresponding rules of internal administration.

D. **Federal Electoral Institute**

In Mexico, electoral organization and qualification was transferred from the municipality responsible to a Federal Government power. Unfortunately, it was transformed into a practice subject to manipulation and without credibility.

Today, the organization of federal elections is carried out by an autonomous public agency denominated as the Federal Electoral Institute.

The Federal Electoral Institute is independent in its function, management, and decisions. It harbors within its structure management, executive, technical, and supervisory organs.

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106. *See supra* note 98.
107. *Id.*
108. *Id.*
109. The autonomy of National Autonomous University of Mexico (UNAM) was first provided by law. It came into the Mexican Constitution via D.O. (June 9, 1980).
The General Council is the directive board and is integrated by a counselor President and eight electoral councillors of the Legislative Power, the representatives of the political parties, and an Executive Secretary. They attend the sessions with a voice, but not a vote. The Executive and technical organs have the necessary qualified personnel available to render a professional electoral service. A Comptroller General has in his charge, with technical and managerial autonomy, the audit of all the revenues and expenses of the institute.

The Counselor President has a term of six years and can be re-elected only once. The electoral councillors occupy their offices for nine years. They are appointed in a staged manner and cannot be reelected. Both are elected by the vote of two-thirds of the members present in the Chamber of Deputies, after proposal by the parliamentary groups and ample social consultation.

The Executive Secretary is appointed with the vote of two-thirds of the General Council, after proposal by its President.

The councilors of the Legislative Power are nominated by the parliamentary groups with party affiliation in one of the Chambers. There is only one councillor for each parliamentary group.

The Federal Electoral Institute is in charge of the activities related to civic training and education, electoral geography, the rights and prerogatives of political associations and political parties, voter registration and voter lists, the printing of electoral materials, the organization of the election and the clarity of the vote counting, declarations of validity and certification of the elections for representatives and senators, and counting of votes in the election for President of the Republic as well as the regulation of electoral laws observance and surveys or opinion polls with electoral purposes.

112. Id.
113. Id.
114. Id.
115. Id.
117. Id.
118. Id.
119. Id.
120. Id.
122. Id.
The audit of the finances of national political parties is in the charge of a technical organ of the General Council of the Institute, with granted autonomy, whose head is designated by the vote of two-thirds of the Council itself after nomination by the President Councillor.123

The political parties operate with permanent public financing for their ordinary activities, temporary financing for those years in which campaigns are held, and special financing for civic education, investigation, and dissemination.124

The Federal Electoral Institute is the sole authority that authorizes the time that is granted to political parties, in accordance with the law that corresponds to the state in radio and television.125

The Federal Electoral Institute was conceived as an impartial citizen organ; however, it has been questioned with respect to the results of the last Presidential election, without any wrongdoing being proved.

The prevailing structure is the result of a negotiation among the three main political parties, so it can be considered as a consensus structure subject to the constant pressure of the parties. Given this circumstance, its autonomy will only be real if its decisions are accepted by the three parties and there is no interference in its actions with respect to electoral processes, in the recounts, and in its final decisions.

E. National Institute of Information Access

The National Institute of Information Access is an agency in charge of promoting and disseminating the right to access the information of governmental activities and to protect personal data in the power of branches and agencies.126

It is integrated by five commissioners appointed by the Federal Executive.127 The Chamber of Senators, or the Permanent Commission, in its case, can object to these appointments.128 The commissioners can only be removed from their functions for violations

123. Id.
124. Id.
125. Id.
126. MEX. CONST. art. 6, as amended, D.O. (July 20, 2007; Nov. 13, 2007).
127. Id.
128. Id.
of the Constitution or the law that affect the attributes of the Institute or after being sentenced for a grave crime.129

The commissioners elect a president for a period of two years.130

F. National Institute of Statistics and Geography

The Institute is, in accordance with the provisions of Section B of Article 26 of the Political Constitution of the United Mexican States, the agency responsible for coordinating the National System of Statistical and Geographic Information.131

The Board is the highest managerial organ of the Institute and is integrated by five members appointed by the President of the Republic with the approval of the Chamber of Senators, or during its recesses, of the Permanent Commission.132

From the members of the Board, the Federal Executive appoints the president of the Institute.133 The rest of the members of the Board act as vice-presidents.134

The president of the Institute holds office for six years, and the vice presidents of the Government Board for eight.135

VIII. THE NEW SYSTEM AT WORK

The presidential system's doctrine understands the separation of powers, since the Federalist Papers were written, as a rule of balance and collaboration for governance.

If the structure of the federal powers in the Mexican Constitution is analyzed, the main feature is the weakness of the Executive, in view of the difficulty of obtaining a majority in Congress.

The new system should be labeled as "congressional."

According to the constitutional provisions, 40% of the Chamber of Deputies is composed by proportional representation, opening opportunities to opposing political parties that were unable to gain majorities in single-member constituencies.136 The critical rules, however, are the maximum limit that the Constitution imposes of

129. Id.
130. Id.
132. Id.
133. Id.
134. Id.
135. Id.
136. The present system was designed by amendment to the Mexican Constitution [D.O. (Dec. 15, 1986)] and achieved by later amendments [D.O. (Apr. 6, 1990; Sept. 3, 1993; Aug. 22, 1996)].
300 deputies belonging to one party in a chamber of 500 and a “forced” minority participation in the Senate. In order to reform the Constitution, two-thirds of the Congress plus the majority of state legislatures are necessary. No party can fulfill these requirements: urgent energy, tax, and labor reforms require a new constitutional framework that has been impossible to achieve. The resulting so-called “mild reforms” have been issued more from electoral opportunism, demagogy, and temporal political equilibriums than from long-term views and solutions.

The electoral system in force was designed to reduce the political power of the then-dominant party, but it is now an impediment for the President to achieve a majority in Congress. Even if the citizens’ vote favors massively a political party, the Constitution hinders the majority will.

The party in power requires the votes of at least another one in the opposition. Not that a majority is always necessary for the working of the presidential system: in the United States, it is not uncommon to have the chambers with a vote decision different from that of the President’s party. The possibility is, however, always open to attain the majority, whereas the Mexican Constitution expressly denies it.

The solution could be the “coalitions” that are so frequent in parliamentary systems. But here we face the present situation of the political parties.

The agreements respond to circumstances and not to permanent alliances that can provide stability and certainty.

This has its origin in the lack of a true program in any of the three parties. The rapid fall of the socialist block and the economic and social imbalances resulting from global capitalism in its current phase, plus the ones Mexico has been carrying, have sowed confusion in the path of left and right and hampered the design of a national project. In this cryptic map, it is hard to find the “center.”

The ground is fertile for hollow formulation or demagogic proposals.

In a system of three political parties in which it is difficult to attain agreements, clear deficiencies in the constitutional order are evident. The most notable is the absence of a system of presidential substitution, which does not subject it to a consensus (difficult to reach) in Congress in the case of the total absence of the office

137. MEX. CONST. art. 135, which has not been amended since 1917.
holder and the lack of a second round in the Presidential election that could legitimize a President who only receives a third of the votes, opening the way to controversies such as the one which resulted from the last election, in which the winner obtained only an advantage of 1%.

In great measure, the PAN-PRI agreement achieved after the presidential elections of 2006 has allowed for some cohesion in Congress. But it must be noted that it is circumstantial, casuistic, and not a permanent alliance, based on programmatic foundations and conditions.

The Federal Judiciary acts with independence, both as a federal court and as a constitutional controller. The Supreme Court of Justice has decided impartially constitutional controversies. The decisions have affected the Executive in noteworthy cases in which its actions, in the form of bylaws and even of approved laws, have been declared unconstitutional (bylaw on the Law of the Electric Industry and various articles of the Law of Radio and Television).

The disagreements between the Executive and the Legislative have forced the Judiciary to resolve issues that harbor strong political content, an undesirable situation, as was recently singled out by the President of the Supreme Court himself in a clear warning. The long shadow of the old idea of excluding the Federal Judicial Power from the contagion of daily politics reappears with the risk of limiting and so damaging the control of constitutionality. It is better to exclude the Judicial Power from certain conflicts. It is the duty of the other two powers to resolve between themselves the conflicts that will inevitably emerge.

The states have gained power.

Each government participates with a local Congress in which it may or may not have a majority. The governors, independently of their party affiliation, have assembled an informal body to negotiate as a block with the Federation. Given the Constitution’s prohibition on states to celebrate agreements among themselves, they have opted for a National Conference of Governors (CONAGO), formed by the 31 governors plus the Chief of Government of the Federal District. It meets periodically and, in the 2000–2006 term, worked with the recognition of the President. CONAGO has been efficient in presenting a unified position and in obtaining greater federal resources.

Few state elections have been questioned. It is a fact that political-economic groups have been strengthened in most of the states, with family, cronies, and interest links, friendships or entities that dominate local politics and which, in the majority of the
cases, accept the alternation of power as a normal occurrence, sub-
ject to the fulfillment of certain unwritten “rules of the game,”
based on respect to consolidated interests. There are other states
in which a dominant political group maintains control, and a few
where political forces are unleashed.

The three main political parties—the National Action Party, the
Party of the Democratic Revolution, and the Institutional Revolu-
tionary Party—control 90% of electoral results but do not offer any
real options. Their political force is more or less equivalent.

It is difficult to get the political parties to agree on the wide-
range solutions the nation requires.

The behavior of some groups of representatives in Congress re-
veals an infamous level of culture: the physical impediment for
the celebration of sessions is now a common practice termed
“takeover of the floor” (toma de la tribuna), supported by organ-
ized street mobilizations to curb the legislative process or even to
impede the vote of the majority.

Citizens have rejected these practices, as evidenced in the media
and polls. The political parties project a deplorable public image,
and only 20% of the electorate favors their performance. This
negative appreciation is aggravated by the fact that the financing
of political parties requires a massive amount of taxpayers’ money.

This behavior can be explained by the novelty of the institutions
and the ignorance of parliamentary practices.

Mexico has no democratic tradition. Prior to the election of
2000, democracy was only practiced:

- A few months after the adoption of the Constitution of
  1824 when confusion predominated over the will to cre-
  ate institutions.
- Nine years after the restoration of the Republic in 1867
  by Presidents Juárez and Lerdo, after the Civil War of
  Reform and the French Intervention. However, in the
  face of the permanent threat opposed by local caudillos,
  government was carried out under the regime of suspen-
  sion of rights at it was ruled and limited in the Constitu-
  tion.
- A year and four months after the fall of the dictatorship
  of Porfirio Díaz and the triumph of the Revolution with
  the democratic Presidency of Francisco I. Madero (Nov.
  6, 1911—Feb. 19, 1913), which ended in a military coup
  and his subsequent murder.

It is necessary to free the possible attainment of the majority
from obstacles. This would imply reducing the number of repre-
sentatives by proportional representation by 100 and the elimination of "national" senators by proportional representation (an aberrant creation contrary to the Federal State). Also, it would require the elimination of the minimum number of deputies that a party can accredit. But it is difficult to attain such a reform. The real power in Congress lies in the political parties that will reject new rules.

The "democratic transition" was achieved constitutionally by successive reforms. The necessary consolidation of normativity and behavior appears to confront clear antidemocratic movements. Particularly negative is the attitude followed by an important sector of the Party of the Democratic Revolution with respect to the results of the 2006 election. The losing candidate, Andrés Manuel López Obrador—supported by strong contingents and mass movements in the capital city—alleged fraud that could not be proved before the electoral tribunal and rejected in full, and with clarity, not only the recognition of the government (excluding its own legislators now in Congress elected in the same process), but the institutions themselves, and led an exalted, visceral, and messianic movement. He lacks concrete programs and measures and has no other purpose than the destabilization of the government. From its unarticulated proposals, a regime similar to that of Hugo Chávez in Venezuela can be glimpsed.

While a strong antidemocratic movement exists, democratic consolidation is difficult, and there is the risk of an authoritarian reaction. In fact, there is a Catholic extreme right-wing movement within the PAN, critical even of the government issued from its own party.

The door is open to reflection on maintaining democratic attitudes that proclaim antidemocratic practices.

The permanence of the Presidential-Party regime was possible due to the absorption of the informal social structures: it organized and controlled workers and peasants; absorbed professional associations; established a modus operandi with business leaders and the Catholic Church, always softened by the possibility of applying limiting constitutional provisions; and it maintained control over the written press and later the collaboration of electronic media.

Today, these structures have been freed, and each one is looking for new social positions and roles.

There is not yet a consolidated civil society in Mexico. We understand civil society as a set of individuals, groups, movements, and organizations diversified in their respective purposes, encom-
passing diverse activities, coherent in their fundamental positions and final goals, capable of taking initiatives, with autonomy from the State, but with respect toward the prevailing institutions.

There is, however, a clear social stratification. The revolution of 1910 allowed for a new balance among social classes and the emigration toward new places. The mestizaje accelerated, and there were substantial advances in education, health, and housing. But the population grew at an accelerated pace. Mexico has today 110 million inhabitants: 40% live below the poverty line; the distribution of income places the country among the most unequal; the 20% of the population registered as having the highest income receives 55% of national income, while the least-favored 20% receives only 4.1%; the indigenous population, after a recent episodic appearance, seems to be forgotten again. All these cleavages are present in urban and rural areas.138

There is no full appreciation of the State of Laws. The local judicial systems are deficient, and there is the general perception that the law favors the dominant classes. Corruption is deeply ingrained in all strata of society.

The adoption of an open economy has increased these differences. The population with low income can be fertile soil for populism and demagogy.

The social strata with low income are exceedingly resentful, especially in the cities. For these groups, institutions and changes have a different meaning than for the middle classes and upper-income strata. They express themselves through protests and the interruption of the daily life of the citizenry. These protests are in great measure organized and sponsored by the antidemocratic movement at the heart of the PRD, and they have resulted in the strongest and most effective manifestation of civil society and are the most effective in gaining the attention of the authorities.

The process toward the creation of groups with different ends with autonomy from the State and with sufficient initiative and influence is very slow. Education, in general, is ranked among the lowest levels in the industrial world and even in the emerging countries.

Intellectuals, academics, and businessmen expressed their ideas fundamentally through the written press. Their social influence had been reduced until now, due to the low reading habits of

138. [Editor's Note: Dr. Gamas declined to provide a specific source for these statistics.]
Mexicans. They demand a relevant role for the citizenry whom they consider to be deprived of their participatory rights.

With limited but growing influence inside and outside of Mexico, intellectual groups that are not associated with any political party have taken up the flag in defense of the Constitution and the laws since the first controversial elections at the state level. Their critical attitude is maintained. They are intelligent proponents and severe critics.

But the main responsibility lies now in the real powers: the political parties in Congress and in government.

In July 2009, the intermediate election for the renewal of the Chamber of Deputies will be a test for both: the society and the political parties; the personalities of the candidates, the political offers and behaviors from the parties, the transparence and conduction of the electoral process, and the way that the public opinion reveals its influence on the whole process will be determined.

If democracy is going to be consolidated, it is imperative to control, looking for consensus and permanent agreements, the actual competing political, economic, and social forces, defining the “rules of the game” and the recognition that democracy is “the only game in town.” The task looks difficult in the measure that diversity and pluralism are spreading.

The big question remains the necessity to reduce the economic inequality. Democracy is associated, if not identified, with capitalism. Market economy is then the only democratic way to alleviate in the short term and to reduce in the medium term the deep and persistent unbalances the country has been suffering since colonial times, harming a large population who finds, more and more, that situation to be unacceptable.

The conciliation of economic development, political stability, and economic homogeneity is the measure of the success of a democratic system and a necessity for its consolidation.

Otherwise, a new political oligarchy or an authoritarian reaction appears to be undesirable possibilities.