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THE REBIRTH OF THE SUPREME COURT OF MEXICO: AN APPRAISAL OF PRESIDENT ZEDILLO'S JUDICIAL REFORM OF 1995

Jorge A. Vargas*

INTRODUCTION

Only one month after taking office, President Ernesto Zedillo Ponce de Leon made one of the most surprising changes in the legislative history of Mexico. President Zedillo initiated a constitutional amendment which profoundly altered the structure and function of Mexico's federal judicial system. Exercising the power granted by article 94, paragraph I, of the Constitution (*Constitución Política de los Estados Unidos*

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Mexicanos),¹ President Zedillo submitted a legislative bill to the Senate proposing to amend twenty-seven articles of the Constitution.²

Among other unprecedented changes,³ President Zedillo transformed the composition, structure, and function of Mexico's Supreme Court of Justice. The amendments reduced the number of Supreme Court Justices from twenty-six to eleven, and established stricter qualifications for nominations.⁴ In addition to changing the manner in which the Justices are appointed, their tenure was limited to fifteen years.⁵ With the intention of creating a truly constitutional court, President Zedillo modified the original jurisdiction of this highest tribunal.⁶ He also created a new judicial organ, the Council of the Federal Judiciary (*Consejo de la Judicatura Federal*) designed to relieve the Supreme Court of its burdensome and time-consuming administrative duties.⁷ This new organ appears to have been inspired by similar modern judicial structures operating in Europe and Latin America.⁸ Moreover, responding to a

1. CONST. art. 94, para. I (conferring upon the President of the Republic—jointly with the members of the House of Representatives and the Senators of the Federal Congress of the Union, and the State legislatures—"the right to initiate laws or decrees").

2. See Diario Oficial de la Federacion [D.O.], Dec. 31, 1994, at 2-9 (amending 27 articles of Mexico's 1917 Constitution, effective on January 1, 1995); see Jorge A. Vargas, *The Supreme Court of Mexico: Recent Changes in Its Composition and Functions* (forthcoming) (providing a detailed legal and historical analysis of these constitutional changes). The author verifies the accuracy of the Spanish language cites and all English translations.

3. Other constitutional changes included the following: the Attorney General's Office (*Procuraduria General de la República*), the functions of federal and state prosecutors (*Agentes del Ministerio Público*), some procedural aspects of the Writ of Amparo (*Juicio de Amparo*), and the adoption of measures leading towards the establishment of a National System of Public Security (*Sistema Nacional de Seguridad Pública*). *Iniciativa de Presidencial de Reformas al Poderes Judicial y la Administracion de Justicia Constitucional*, *Presidencia de la Republica, Palacio Nacional*, Mexico, Dec. 5, 1995 [hereinafter *Iniciativa*] (on file with the author). This article does not address any of these changes.

4. CONST. arts 94, 95, and 96.

5. *Id.* art. 94.

6. *Id.* art. 105.

7. *Id.* art. 100; see also *infra* notes 119-31 and the accompanying text (addressing the composition, functions, and administrative structure of the Council of the Federal Judiciary in detail).

8. Similar Judicial Councils currently exist, for example, in France, Spain, and Italy. Their work appears to have influenced the recent emergence of similar organs in Latin American countries, such as Argentina, Bolivia, Costa Rica, Colombia, El Salvador, Mexico, Panamá, Paraguay and Perú. See Héctor Fix Zamudio, *Jurisdicción*

national demand for a competent, professional, and honest system of justice, President Zedillo created a federal judiciary comprised of ten administrative categories, ranging from Circuit magistrates and District judges to court secretaries and "Actuarios."⁹ In accordance with the guidelines and directives formulated by the Plenary of the Council of the Federal Judiciary, this branch of the government will be administered and regulated by the Institute of the Judiciary (*Instituto de la Judicatura*).¹⁰

In order to restructure the Supreme Court, President Zedillo, made an unprecedented decision, and persuaded the twenty-six existing Supreme Court Justices to retire early.¹¹ As a result, during the first twenty-six days of 1995, while the Senate examined the candidates nominated by the new executive, Mexico had no Supreme Court.¹²

Constitucional y Protección de los Derechos Fundamentales en América Latina, in AÑO XI, CONTRIBUCIONES, No. 2, at 84 (1994).

9. Under Mexican law, *Actuarios* are officers of federal or state courts who have been legally empowered to conduct certain judicial acts, in particular: personally serving summons to defendants or witnesses; implementing writs of attachment and writing the corresponding minute in the judicial file; and keeping a formal record which details their activities. Like Notary Publics (*Notarios Públicos*), *Actuarios* are empowered with public faith (i.e., *investidos de fé pública*) in relation with any official act they conduct in the exercise of their functions. The attributions and obligations of *Actuarios* are regulated by the respective Organic Act of the Judicial Power (*Ley Orgánica del Poder Judicial*) of each of the 31 States that compose the Republic of Mexico. See LEYES Y REGLAMENTOS DE BAJA CALIFORNIA 178-79 (Filiberto Cárdenas Velasco ed., 1992).

10. See *infra* notes 167-75 and the accompanying text (explaining that the New Institute of the Judiciary is an auxiliary organ of the Federal Judiciary council).

11. See D.O., Dec. 31, 1994, at 9 [*Article Segundo Transitorio*] (providing that the current Justices "shall conclude their functions at the entry into force" of said decree, namely January 1, 1995). The 26 justices received a pension equal to a "forced retirement" pursuant to a special decree establishing the grounds for "[f]orced or voluntary retirement (*Retiro forzoso o voluntario*) of the Supreme Court Justices." *Id.*

12. The Senate did not approve the 11 justices of the numerically more compact Supreme Court of Justice until January 26, 1995. The new justices took their official oath the following day. The new Justices are: 1) José Vicente Aguinaco Alemán, 2) Mariano Azuela (repeated), 3) Juan Díaz Romero (repeated), 4) Genaro David Góngora Pimentel, 5) Juventino Castro Castro, 6) Olga María del Carmen Sánchez Cordero, 7) Juan Nepomuceno Silva Meza, 8) Humberto Román Palacios, 9) Sergio Salvador Aguirre Anguiano, 10) José de Jesús Gudiño Pelayo, and 11) Guillermo Iberio Ortiz Mayagoitia. Ernesto Zedillo Ponce de Leon, Mexico's State of the Nation Address (Sept. 1, 1995) (transcript available in LEXIS, CURNWS file).

In order to implement these constitutional changes legally, several federal statutes and codes had to be amended, most notably the Organic Act of the Federal Judicial Power (*Ley Orgánica del Poder Judicial de la Federación* or L.O.P.J.F.).¹³

Most specialists in the Mexican judiciary anticipated this profound reform. First, drastic changes in Mexico's judicial system, at the federal and state levels, had long been expected as the indispensable complement to Mexico's recent policies in favor of unimpeded international trade, a strong drive towards privatization, a smaller and more efficient bureaucracy, and the fostering of foreign investment.¹⁴ Without a professional, legally efficient, modern, and honest system of justice, Mexico cannot expect any political and economic modernization or similarly, any increase in the flow of foreign investment.¹⁵

Second, making changes to the Supreme Court of Justice is but a recurring exercise in Mexico. Important changes have been made to this high court in the past, especially during the administrations of Presidents Calles in 1928; Cárdenas in 1934 and 1940; Alemán in 1951; Díaz Ordaz in 1968; and De la Madrid, as recently as 1987.¹⁶ In general, most of these structural and procedural changes attempted to alleviate the Supreme Court of its very heavy docket, as well as to endow the high tribunal with the power of a true constitutional court.¹⁷ These changes follow the spirit that caused the United States Congress to alter the structure and functions of the United States Supreme Court in the early stages of its evolution.¹⁸

13. See *Ley Orgánica del Poder Judicial de la Federación* (L.O.P.J.F.), in D.O., May 26, 1995, at 2 (illustrating the text of the Act). This Mexican statute not only parallels but appears to have been inspired originally by the United States 1789 Judiciary Act.

14. See Jorge A. Vargas, *Mexico's Foreign Investment Act of 1993*, 16 *LOY. L.A. INT'L & COMP. L.J.* 101 (1994) (listing Mexico's 1993 policy changes affecting trade, privatization, bureaucracy, and foreign investment, and predicting strong judicial reforms to support those changes).

15. *Id.*

16. See FELIPE TENA RAMÍREZ, *LEYES FUNDAMENTALES DE MEXICO 1808-1991*, at 881-1058 (S.A. Porrúa ed., 1991) [hereinafter *LEYES*] (documenting constitutional changes); see also *DERECHOS DEL PUEBLO MEXICANO, MEXICO A TRAVES DE SUS CONSTITUCIONES*, XLVI Legislatura de la Cámara de Diputados, Vol. VII (1967) [hereinafter *DERECHOS*] (detailing constitutional reform initiatives which have fortified the judicial power).

17. See Héctor Fix Zamudio, *Setenta y Cinco Años de Evolución del Poder Judicial de México* [Seventy Five Years of Evolution of the Judicial Power of Mexico], in *OBRA JURIDICA MEXICANA* 651 (2d ed. 1987).

18. See the Judiciary Act of 1789, Ch. 20, 1 Stat. 73 (1789) and its subsequent

Finally, in 1994, during President Zedillo's visit to Guadalajara City, as the candidate of the official party, *Partido Revolucionario Institucional* (PRI), President Zedillo proposed this reform. In advancing ten proposals for the creation of a new system of security and justice, the then presidential candidate strongly advocated for a comprehensive reform of the judicial power.¹⁹ This reform embraced the need to have more independent judges, quality in the administration of justice, and guaranteed access for all Mexicans to the justice system.

President Zedillo summarized the proposed changes in the legislative initiative which he submitted to the Senate to amend the Constitution:

The purpose of this initiative is to strengthen the Constitution and its legality as the basic foundations for a safe, ordained and tranquil social life. The strengthening of the Judicial Power, and [the corresponding] alterations to its internal organization and functions, and the jurisdiction of those institutions in charge of [public] security and the administration of justice, are proposed herein . . . These changes entail an important step in the development of our democratic régime, strengthening the Judicial Power to accomplish a better balance among the Federal Powers, thus creating the bases for a system of administration of justice and public security that responds in a better way to the determination of all Mexicans to live in a nation of law and order.²⁰

For President Zedillo, these constitutional modifications, as profound and unprecedented as they may be, signal only the beginning of future reform.²¹ These changes are likely to continue to touch not only upon the federal judicial system but, more importantly, to establish a more democratic balance between the three branches of the government in Mexico, which would open the door for Mexico to enter into a new era of true political democracy and a new kind of federalism.²²

amendments, especially in 1869, 1875 and 1887 (demonstrating the early evolution of the United States Supreme Court).

19. See ERNESTO ZEDILLO, *LAS POLITICAS DE BIENESTAR* (1994); see also *Seguridad y Justicia*, at 102-21, Guadalajara, Jal., July 14, 1994.

20. *Iniciativa*, *supra* note 3, at 2-3.

21. Once the Senate and the House of Representatives approved President Zedillo's bill by a two-thirds vote, the constitutional amendments in question were approved by a simple majority of the State legislatures. The entire process was accomplished in less than one month. See CONST. art. 135 (establishing the procedure—patterned after the United States Constitution, Article V—for amending the Constitution).

22. See generally *Iniciativa*, *supra* note 3.

This article is divided into four parts. Part I addresses the new composition and functions of Mexico's Supreme Court of Justice. Part II analyzes "Unconstitutionality Actions" (*Acciones de inconstitucionalidad*). In what may constitute one of the most dramatic changes to its original jurisdiction, the new second paragraph of article 105 of the Mexican Constitution empowers the Supreme Court to decide the constitutionality of federal and state laws, as well as international treaties, when petitioned by a legislative minority.²³ Part III explores the role, composition, and functions of the Federal Judiciary Council, the most recently added organ to the Federal Judicial Power. A brief reference will be made here to the manner in which the Institute of the Judiciary (*Instituto de la Judicatura*) is structuring and managing the development, preparation, and training of the members of this organ. Part IV will offer some ideas on the impact these changes may have. In particular, it will examine how the work of the Supreme Court will impact the lives of Mexicans and the legal future of the country.

I. THE NEW COMPOSITION AND FUNCTIONS OF THE SUPREME COURT

Mexico's federal judicial system is ostensibly patterned after Article III of the United States Constitution.²⁴ During the formation of the first federal constitution in 1824,²⁵ Mexico adopted a dual system of federal and state courts, presided over by one Supreme Court of Justice.²⁶ This system has been repeated in subsequent constitutions, in particular the Federal Constitution of 1857,²⁷ and more recently, the Constitution of 1917,²⁸ which President Zedillo sought to amend.

According to the Organic Act of the Federal Judicial Power (*Ley Organica del Poder Judicial Federal*), as amended in 1995, judicial power is exercised by: 1) the Supreme Court of Justice of the Nation

23. CONST. art. 105.

24. See Fix Zamudio, *supra* note 16, at 651.

25. CONST. (1824).

26. *Id.* art. 123 (providing that the federal judicial power shall reside in one Supreme Court of Justice, in the circuit courts and in the district courts). Article 138 added, "[a] law shall determine the manner and form in which the Supreme Court of Justice is to take cognizance of the cases included in this Section." *Id.* art. 138; see LEYES, *supra* note 15, at 186, 189.

27. CONST. art. 90 (1857).

28. CONST. arts. 94-107 (1917) reprinted in Fix Zamudio, *supra* note 16, at 856-65 (referring to the federal judicial power).

(*Suprema Corte de Justicia*),²⁹ 2) circuit collegiate courts, 3) circuit unitary courts, 4) district courts, 5) the Council of the Federal Judiciary, 6) the federal jury of citizens (*Jurado federal de ciudadanos*), and 7) the courts in the states and in the Federal District (Mexico City) in the cases provided by article 107, paragraph II, of the Constitution.³⁰ Except for the newly added Council of the Federal Judiciary, the system remains identical to the one under the preceding Organic Act of 1988.³¹

This enumeration does not take into account the existence of a large (and growing) number of specialized courts—such as the administrative, agrarian, electoral, fiscal and labor courts—that are placed not as a part of the Federal Judicial Power, but rather, under the Federal Executive.³² These courts are outside the jurisdiction of the new Council of the Federal Judiciary.³³ In Mexico, the general opinion is that these Executive-aligned tribunals clearly contravene the principle of separation of powers, enshrined in article 49 of the Mexican Constitution.³⁴

A. THE COMPOSITION OF THE SUPREME COURT AND THE APPOINTMENT OF JUSTICES

In his legislative bill, President Zedillo prefaced the changes to the Supreme Court by recognizing that this is “the judicial organ which has functioned with the most efficiency and credibility [in Mexico].”³⁵ Therefore, any change to be made to Mexico’s system of justice must start with its highest tribunal.³⁶ Prior to the amendment, the Mexican Supreme Court was composed of twenty-six Justices,³⁷ and functioned

29. The official name of Mexico’s Supreme Court is the *Suprema Corte de Justicia de la Nación*. See ALBERTO TRUEBA URBINA & JORGE TRUEBA BARRERA, *NUEVA LEGISLACION DE AMPARO REFORMADA 180* (S.A. Porrúa ed., 1993) [hereinafter *LEGISLACION*].

30. L.O.P.J.F. art. 1 (1995), in D.O., May 26, 1995, at 2.

31. L.O.P.J.F. art. 1, in D.O., Jan. 5, 1988 (as amended in 1988); see *LEGISLACION*, *supra* note 28, at 179.

32. *LEGISLACION*, *supra* note 28.

33. *Id.*

34. *Iniciativa*, *supra* note 3, at 1-11.

35. *Id.* at 1-4.

36. *Id.* at 5.

37. See Fix Zamudio, *supra* note 16, at 3. Five of these Justices, known as “*Supernumerarios*,” are not members of the Supreme Court plenary, but rather formed a part of the Auxiliary Chamber (*Sala Auxiliar*).

either as a full Court (*Pleno*), or divided into sections composed of five Justices³⁸ (*Salas*).³⁹

Article 94 of the Constitution, as amended, reduced the number of Justices from twenty-six to eleven,⁴⁰ the number originally established by the Constitutions of 1824 and 1917.⁴¹ This reduction generated an intense debate,⁴² focusing on whether this relatively small number of Justices would be able to handle the usually heavy caseload in a prompt and effective manner. The comparably small number of magistrates that occupy judicial posts in similar constitutional courts in other countries convinced the Mexican Congress and the State legislatures to proceed with this change.⁴³

Unlike the Constitution of the United States, which provides for "one Supreme Court" but does not designate its size, the Mexican Constitution explicitly enumerates not only the specific number of Justices, known as Ministers (*Ministros*), but also the original and appellate jurisdiction of the Court.⁴⁴ The Constitution also mandates other minute details which may have been more appropriately placed in secondary

38. See L.O.P.J.F., in D.O., May 26, 1995 (regulating, in great detail, the composition and function of the Court; its jurisdiction (in *Pleno* or in *Salas*); powers and obligations of its President (*Presidente de la Suprema Corte*)—the equivalent of the Chief Justice of the United States Supreme Court; calendar of activities; licenses and retirements; and so forth).

39. CONST. art. 94.

40. L.O.P.J.F. art. 2.

41. CONST. art. 124 (1824) (providing that the Supreme Court (*Corte Suprema de Justicia*) was to consist of 11 justices (*Ministros*), distributed among three *Salas* and one Prosecutor (*Fiscal*)). The general Congress was authorized to increase or decrease the number of Justices, as it considered convenient. See LEYES, *supra* note 15, at 186.

42. See MARIO MELGAR ADALID, REFORMAS AL PODER JUDICIAL (UNAM, 1995) [hereinafter REFORMAS] (providing a detailed academic analysis of aspects of this constitutional amendment). The proposed changes generated widespread discussion and controversy throughout the nation, especially within political, legal, and academic circles.

43. See Héctor Fix Fierro, Reformas y Adiciones a la Constitución Federal en Materia de Administración de Justicia (1995) (unpublished paper, on file with the author) [hereinafter Reformas y Adiciones] (indicating the low number of Justices on the high courts of other nations: nine in France, 16 in Germany, 12 in Spain, 15 in Italy, 14 in Austria, 13 in Portugal, and nine in the United States).

44. See Acta Constitutiva de la Federación Mexicana (Constitutional Act of the Mexican Federation), in D.O., Jan. 31, 1824 (serving as a guide to the Constitutional Congress that formulated the first Federal Constitution of Mexico in 1824).

statutes.⁴⁵ Such details include, for example: qualifications for judicial appointment, method of selection, official oath, temporary absences, resignations, licenses, and so forth.⁴⁶

Similar to what has happened with the evolution of the United States Supreme Court, where the number of Justices has been modified seven times (from the original six in 1789 to the present number of nine in 1869),⁴⁷ the composition of the Mexican Supreme Court has also grown in a gradual manner. The Federal Constitution of 1824 established the initial number of eleven, and ultimately a constitutional amendment to article 94, made by President Miguel Alemán in 1951 (known as the "Alemán Reform"),⁴⁸ resulted in the most recent number of twenty-six.

The Court will continue to function both in *Pleno*, and in two *Salas*, each composed of five Justices. Every year, the Court shall have two sessions: the first, from January until mid-July, and the second, from August until mid-December.⁴⁹ As provided by the 1995 Organic Act of the Federal Judicial Power, these sessions shall be open to the public, except when "morals or public interest dictate otherwise."⁵⁰

Decisions of the Supreme Court, when acting as a full court, are to be unanimous or by a majority vote (except in two special cases provided by paragraphs I and II of article 105 of the Constitution).⁵¹ Justices may abstain from voting only "when there is a legal impediment or when they did not attend the discussion of the case."⁵² In the event of a tie, the matter shall be resolved in the subsequent session. If the Justices cannot break the tie at this session, then they shall discard the draft decision (*Proyecto*) and the President of the Supreme Court is to

45. See CONST. arts. 94-101 (devoting an article to each of these details).

46. *Id.*

47. In 1789, the United States Congress established the number of Justices at six. In 1801, this number changed to five, and then, in 1807, to seven. In 1837, there were nine justices and in 1863, there were 10. In 1866, the number changed back to seven and then increased to nine in 1869. See Judiciary Act of 1789, 1 Stat. 73 (1789) (amended 1869, 1875 and 1887).

48. LEYES, *supra* note 15, at 881-1058; see Ingrid Brena Sesma, *Un "Radical" Proyecto de Reformas al Poder Judicial*, in REFORMAS, *supra* note 41, at 37-44.

49. L.O.P.J.F. art. 3.

50. CONST. art. 94; see L.O.P.J.F. art. 6 (providing that the Court's sessions in *Pleno* "shall be, as a general rule, public; and private when the *Pleno* so determines"). The Court's plenary sessions addressing "the autonomy of the organs of the Federal Judicial Power, and the independence of its members, shall be private." L.O.P.J.F. art. 6.

51. L.O.P.J.F. art. 7.

52. CONST. art. 7.

appoint a new Justice who, taking into account the opinions already advanced, is to produce a new draft decision.⁵³ If the tie continues, the President is empowered to break it with a quality vote (*voto de calidad*).⁵⁴

Nominations and appointments of Supreme Court Justices are regulated by article 96 of the Constitution. Unlike the United States Constitution, which leaves many questions open to interpretation regarding the federal judicial power, Mexico's fundamental law, as suggested earlier, is very detailed, more closely resembling the United States Judiciary Act.⁵⁵

Prior to the amendment, article 96 of the Constitution provided that these "nominations are to be made by the President of the Republic and submitted for the approval of the Senate (*Cámara de Senadores*), which either grants or denies approval within thirty days."⁵⁶ The new version provides that the President shall submit the names of three candidates (*Terna*) for approval to the Senate. Once the Senate examines the candidates, it designates the Justice to fill the vacancy. Rather than selecting the candidate by simple majority, as the old text demanded, the Senate now must approve the candidate by a two-thirds majority vote.⁵⁷

As opposed to the American system of submitting one nomination for the Supreme Court,⁵⁸ the federal executive proposes the names of three candidates for Senate approval to fill a Supreme Court vacancy.⁵⁹ In Mexico, this system is thought to increase the likelihood that the chosen candidate will be independent—both politically and judicially detached from the Executive. If the Senate fails to approve a candidate within the new requisite term of thirty days, article 96 provides that "the vacancy shall be filled by the person who, out of the three proposed, is designated by the President of the Republic."⁶⁰

In order to occupy a seat in the Supreme Court, a potential Justice must comply with the requirements enumerated in article 95 of the

53. L.O.P.J.F. art. 7

54. *Id.*

55. See Judiciary Act, ch. 20, 1 Stat. 73 (1789) (setting up the basic structure of the United States judicial system). Article 96 of the Mexican Constitution, like the Judiciary Act, contains a detailed outline of the structure and jurisdiction of a multi-tiered federal court system.

56. See LEYES, *supra* note 15, at 623 (containing the old text of article 96).

57. CONST. art. 96.

58. U.S. CONST. art. II, § 2.

59. CONST. art. 96.

60. See LEYES, *supra* note 15, at 623 (reprinting former art. 96).

Constitution,⁶¹ which require that the candidate be: *inter alia*, a Mexican citizen by birth; a citizen in good standing, whose civil and political rights have not been restricted for any reason ("in full exercise of his/her political and civil rights"); "have an attorney's degree"; and have a good reputation (*buena reputación*). Justices must not have been "convicted of any crime which carries a maximum jail term of one year in prison." This is excepted to, however, if the crime at issue "seriously injures the good reputation (*buena fama*) in the public's eye."⁶²

President Zedillo indicated in his legislative bill, that he was going to "establish more demanding requirements and impediments"⁶³ to becoming a Supreme Court Justice. Modifying the requirements would ensure that the nominee has sufficient professional capability and judicial experience for full discharge of a Justice's duties.

Although the requirements remained fundamentally the same, the principal changes included: precluding those who, during the preceding year, had served in certain important political posts;⁶⁴ a recommendation to give preference to persons who had served with distinction as judges or legal practitioners;⁶⁵ a requirement that candidates must have resided in Mexico "during the last *two years* prior to the nomination." The original residence requirement was five years,⁶⁶ and in his bill, President Zedillo proposed to reduce it to only one year.⁶⁷

Another significant change merits some consideration, namely that the tenure of Supreme Court Justices is now limited to a maximum of fifteen years. Prior to the change, article 94 of the Constitution, provided that the Justices could only be "deprived of their posts" when impeached, in accordance with the procedure established by the Constitu-

61. CONST. art. 95.

62. See *id.* art. 95 (containing the complete text).

63. *Iniciativa*, *supra* note 3, at 7. No definitions are provided for these terms.

64. CONST. art. 95, para. VI. These political posts are: 1) Member of the Presidential cabinet (*Secretario de Estado*); 2) Head of an administrative department, such as PEMEX, 3) Attorney General of the Republic (*Procurador General de la República*); 4) Attorney General of the Federal District (*Procurador General del D.F.*); 5) Senator; 6) Federal representative (*Diputado federal*); 7) Governor of any State; and 8) Head of the Department of the Federal District (*Jefe del Departamento del D.F.*). *Id.*

65. For the exact text of the new paragraph added by the Zedillo amendment, see CONST. art. 95.

66. See LEYES, *supra* note 15, at 623 (quoting former art. 95, para. V).

67. *Iniciativa*, *supra* note 3, at 10.

tion,⁶⁸ or when they reach the age of compulsory retirement (seventy years).

According to President Zedillo, this change will result in a Supreme Court that is current and up-to-date with Mexico's social trends, and able to legitimize its judicial function on a periodic basis:

If our Supreme Court is to become a true constitutional court, it must be kept up to date to guarantee that its constitutional interpretation is in harmony with the cultural, social and economic conditions at the time when this interpretation is to be applied.⁶⁹

A new paragraph added to article 101 of the Constitution provides that Supreme Court Justices, as well as other magistrates and judges, "may not act as patrons, attorneys, or agents in any proceedings before the organs of the Federal Judicial Power, within the two years following the date of their retirement."⁷⁰

This same article requires "Justices, magistrates, judges (including their secretaries), and members of the new Council of the Federal Judiciary not to hold employment or office" at the federal or state level, in the Federal District (Mexico City), or of a private nature, during their judicial tenure, and imposes sanctions, such as losing the judicial post, on those who violate this provision.⁷¹ The only exception is for the positions performed "with no remuneration, in scientific, educational, literary or charitable associations."⁷²

This restriction that members of the federal judiciary, during their tenure, not have sources of income other than their remuneration—a restriction long imposed on Supreme Court Justices—contrasts the situation enjoyed by United States judges, magistrates and Justices. United States federal judges, including those on the Supreme Court, can supplement their salaries⁷³ with additional sources of income. It is known,

68. CONST. art. 94 (providing the responsibilities of public officials and addressing the issue of political impeachment); LEYES, *supra* note 15, at 623 (providing former art. 94).

69. *Iniciativa*, *supra* note 3, at 7.

70. CONST. art. 101.

71. CONST. art. 101 (1917). This provision originally appeared in the Constitutional Draft formulated by Venustiano Carranza in 1916, which was later approved and included in the original text, as article 101 of the 1917 Constitution. The tenor of this prohibition dates back to the Seven Constitutional Laws (*Las Siete Leyes*) of 1836. See DERECHOS, *supra* note 15, at 860-63 (discussing restrictions on employment for federal officials).

72. CONST. art. 101.

73. It has been reported that, in 1991, the Associate Justices received salaries of

for instance, that United States Supreme Court Justices supplement their salaries by honoraria for teaching and speeches.⁷⁴

A special proviso in article 94 establishes that salaries of Supreme Court Justices, as well as Circuit magistrates, District judges and Counselors (*Consejeros*) of the Council of the Federal Judiciary, may not be reduced during their tenure.⁷⁵ This proviso, taken directly from the United States Constitution,⁷⁶ resulted from a 1928 amendment to the 1917 Mexican Constitution.⁷⁷

One final issue regarding the Mexican Senate warrants consideration.⁷⁸ This constitutional amendment was also designed, at least in part, to give more power to the Senate, *vis-a-vis* the President of the Republic. Rather than continuing with the old political governmental structure, comprised of a most powerful Executive that systematically overshadowed the legislature and judiciary, this change, which was the result of President Zedillo's new political philosophy, was intended to equalize the power among the three federal branches.⁷⁹

As opposed to the pre-Amendment system of simply approving the single nomination made by the President of the Republic, to fill a vacancy at the Mexican Supreme Court of Justice, the Senate now has more leverage and independence to choose among the three candidates nominated by the President. Unlike the United States—where the Senate, either through a negative vote or through a refusal to act, has failed to confirm twenty-six of the President's nominations to the Supreme Court⁸⁰—only once, in 1944, did the Mexican Senate reject two nomi-

\$153,600 and the Chief Justice \$160,600. LAWRENCE BAUM, *THE SUPREME COURT* 13 (1992).

74. *See id.* (reporting that in 1990 Associate Justice Antonin Scalia received \$47,000 for 12 speaking engagements).

75. CONST. art. 94.

76. U.S. CONST. art III, § 1.

77. *See* D.O., Aug. 20, 1928 (relating that this was the first amendment to article 94); DERECHOS, *supra* note 15, at 706 (providing the text of this amendment).

78. In Mexico, 128 senators comprise the Senate (*Cámara de Senadores*), including four for each of the 31 States, and four for the Federal District (Mexico City). Out of each four senators, three are elected by a direct majority vote and the remaining one is assigned to the political party that had obtained the largest majority. CONST. art. 56 (1917); *see also* CONST. arts. 76, 49, 66 (enumerating the Senate's exclusive powers).

79. *See* José Trinidad Lanz Cárdenas, *Las Nuevas Facultades del Senado de la República y el Poder Judicial*, in REFORMAS, *supra* note 41, at 47-55 (discussing President Zedillo's movement towards political reform and openness).

80. *See* BAUM, *supra* note 72, at 47 (stating that these 26 instances of unap-

nations submitted to it by President Gral Manuel Avila Camacho. Even in that case, however, the Senate decided to approve the two nominations in question, when President Avila Camacho, rather than proposing other candidates, decided to re-submit the same ones.⁸¹

The unbroken consistency demonstrated by the Senate in approving all of the nominations for Supreme Court Justices has led one academic to conclude that the Senate's role in this area had been one of a rubber stamp.⁸² With this constitutional change, the Senate will hopefully have a pivotal role in the appointment of future Justices (*Ministros*) of Mexico's Supreme Court. Before the constitutional amendments, the Mexican Senate engaged in a relatively simple and unobstructed process of approving Supreme Court Justice nominees. The change in the political landscape is expected to transform the Senate's role in the nomination process, from a mere constitutional or political formality into a detailed public examination, designed to probe into the ability and professional qualifications of the nominees. Future discussions on these candidates shall address questions not only of the political affiliations and professional experience of the candidates, but also of their: 1) geographical origin, 2) age, 3) sex, 4) prior judicial service, 5) social class, and even 6) religion or ethnic origin. This exercise will resemble the United States Senate nomination process for a United States Supreme Court Justice.⁸³

If these changes occur, future Justices of Mexico's Supreme Court will come not only from Mexico City (as has been customary), but also from various other states, and the Supreme Court will gradually achieve a proportional and balanced geographical representation. Additionally, future nominees, rather than having long political careers, will be selected from magistrates who have had long and brilliant judicial careers. Moreover, rather than having a Supreme Court consisting solely of

proved nominees constitute approximately 20% of all nominations considered by the United States Senate).

81. See Lanz Cárdenas, *supra* note 78 (describing the resubmission of Supreme Court Justices, Teófilo Olea y Leyva and Fernando de la Fuente).

82. See Lanz Cárdenas, *supra* note 78, at 54 (expressing this sentiment in Spanish: "[S]e fortalece al Senado, en cuanto a que ya no será un simple ratificador . . ." (Strengthening the Senate, such that it shall no longer simply be a "rubber-stamp") (emphasis in original)).

83. See STEPHEN L. WASBY, *THE SUPREME COURT IN THE FEDERAL JUDICIAL SYSTEM* 86-136 (4th ed. 1993) (describing the nomination process); see also Paul E. Freund, *Essays on the Supreme Court Appointment Process*, 101 HARV. L. REV. 1146 (1988) (discussing the role and process of senatorial advice and consent).

“Mestizo” or “Criollo”⁸⁴ Mexican Justices, future Justices will proudly come from some of Mexico’s indigenous groups.

B. THE JURISDICTION OF THE SUPREME COURT OF JUSTICE

Unlike the United States Constitution,⁸⁵ Mexico’s fundamental law specifically enumerates not only the original and appellate jurisdiction of the Supreme Court, but also provides in great detail⁸⁶ the jurisdiction of the circuit and district courts. Thus, the chapter of Mexico’s 1917 Constitution relative to the Federal Judicial Power is comprised of fourteen articles.⁸⁷

Historically, this part of the Constitution has evolved gradually, becoming lengthier, more technical, and increasingly complex. This evolution is evident when comparing the current federal judicial system with the skeletal system established by the Federal Constitutions of 1824 and 1857, which laid down its legal contours and created its political foundation.⁸⁸ Identifiable causes of this growth include: 1) the increasing frequency with which the “*Juicio de Amparo*”⁸⁹ has been, and continues to be, used to restore the infringement of constitutional rights by public authorities; 2) the incessant quest for a better and more efficient

84. A “mestizo” or “criollo” is a person of mixed ethnic descent.

85. U.S. CONST. art. III, § 1.

86. CONST. arts. 103, 107.

87. CONST. arts. 94-107.

88. See CONST. arts. 123-44 (1824); CONST. arts. 90-102 (1857); LEYES, *supra* note 15, at 186-90, 622-24.

89. *Juicio de Amparo* is a federal suit filed in a federal court by an individual, whether a Mexican national or a foreigner, who alleges that his/her constitutional rights—known in Mexico as “Individual Guarantees” (*Garantías individuales*), enumerated in Articles 1-29 of the Mexican Constitution—have been violated by Mexican authorities at the federal, state or local levels. Articles 103 and 107 of the Mexican Constitution, in conjunction with Articles 14 and 16 of the same Constitution, provide the legal basis for this peculiar type of suit. *Amparo* suits are governed by a federal statute known as the Federal Amparo Act (*Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política*). The crux of the *Amparo* suit is to enjoin the authorities, both federal and state, from continuing to inflict acts in violation of the victim’s constitutional rights.

Juicio de Amparo is a rather peculiar Mexican legal institution. For the substantive and procedural aspects of this unique Mexican suit, see IGNACIO BURGOA, *EL JUICIO DE AMPARO* (S.A. Porrúa ed., 15th ed. 1987) (providing an excellent analysis of the origin, content, and evolution of this unique legal institution). See also Héctor Fix Zamudio, *A Brief Introduction to the Mexican Writ of Amparo*, 9 CAL. W. INT’L L.J. 306 (1979) (containing an introductory analysis and overview).

system of justice;⁹⁰ 3) the legitimate desire to transform the Supreme Court into a truly constitutional tribunal;⁹¹ and 4) the undisputed, rapid societal growth of Mexico over the last five decades, with varied and challenging consequences.⁹² Specifically, a paragraph in article 94 of the Constitution provides that:

The jurisdiction of the Supreme Court, its functioning as a whole (*Pleno*) or in sections (*Salas*); the jurisdiction of the Circuit courts and of the District courts, and the responsibilities incurred by the public servants of the Federal Judicial Power, shall be governed by what is provided by the laws in accordance with the bases established by this Constitution.⁹³

Pursuant to its legal tradition, certain articles of the Mexican Constitution, the content of which have special historic, economic, cultural, or social significance, are expanded and developed into full-fledged statutes, and are officially known as "*Ley Reglamentaria*."⁹⁴ In the federal judicial area, the following statutes merit special attention:

- 1) the Organic Act of the Federal Judicial Power,⁹⁵
- 2) the Federal Amparo Act, derived from articles 103 and 107 of the Constitution,⁹⁶ and

90. See ZEDILLO, *supra* note 19, at 113-18.

91. Héctor Fix Zamudio, *La Suprema Corte de Justicia como Tribunal Constitucional*, in LAS NUEVAS BASES CONSTITUCIONALES Y LEGALES DEL SISTEMA JUDICIAL MEXICANO, LA REFORMA JUDICIAL 1986-1987, at 345-90 (S.A. Porrúa ed., 1987).

92. See PLAN NACIONAL DE DESARROLLO (NATIONAL DEVELOPMENT PLAN), 1994-2000, in D.O., May 31, 1995 [hereinafter PLAN NACIONAL DE DESARROLLO] (discussing generally the basis for judicial reform in Mexico).

93. CONST. art. 94.

94. For example, the following constitutional articles have generated a corresponding federal statute: 1) article 123, which regulates labor questions, generated the Federal Labor Act (*Ley Federal del Trabajo*); 2) article 27, addressing oil, agrarian lands and other natural resources, led to the creation of the Federal Petroleum Act (*Ley Reglamentaria del Petróleo*) and the Federal Agrarian Act (*Ley Federal Agraria*); 3) article 3, establishing the public education system, led to the Federal Education Act (*Ley Federal de Educación*).

95. See generally L.O.P.J.F.

96. Ley de Amparo Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, in D.O., Jan. 10, 1936. This highly technical statute is composed of 234 articles. See *Leyes Reglamentarias del Amparo*, LEGISLACION, *supra* note 28, at 475-89 (containing a brief history of the origin and evolution of this statute, which was first enacted in 1852).

3) the Reglamentary Act of the First and Second Paragraphs of article 105 of the Constitution,⁹⁷ recently enacted by President Zedillo as a result of the constitutional amendments.

Article 94⁹⁸ provides the constitutional basis for the responsibilities of public servants, and articles 108 through 114⁹⁹ enumerate these responsibilities. The political impeachment process delineated in articles 108 through 114,¹⁰⁰ and article 110 of the 1917 Constitution, governs any questions arising out of these powers. Prior to the Amendment, article 103 of Mexico's fundamental law, patterned after the United States Constitution,¹⁰¹ provided that federal courts had jurisdiction to resolve: 1) "controversies"¹⁰² arising out of "laws or acts by the authority that violate constitutional rights," known in Mexico as "[i]ndividual guarantees" (*Garantías individuales*);¹⁰³ 2) laws or acts of the federal authority that encroach upon or restrict the autonomy of the States; and 3) laws or acts of State authorities invading the sphere of federal jurisdiction.¹⁰⁴

Article 104 added to federal jurisdiction: 1) maritime law controversies; 2) controversies in which the Federation is a party; 3) controversies between two or more States, or one State and the Federation, or those between the Federal District (Mexico City) courts and those of the Federation or of a State; and 4) cases affecting members of the diplomatic or consular corps.¹⁰⁵ The old text of Article 105 enumerated six "con-

97. Ley Reglamentaria de las Fracciones I y II del Artículo 105 de la Constitución Política de los Estados Unidos Mexicanos, in D.O., May 11, 1995, at 3 [hereinafter *Ley Reglamentaria*]. This new statute consists of 73 articles.

98. CONST. art. 94

99. CONST. arts. 108-14.

100. CONST. art. 110 (enumerating the public servants who are subject to political impeachment). In the federal judicial area, the following are listed: 1) Supreme Court Justices, 2) Counselors of the Federal Judiciary Council, 3) the Attorney General of the Republic, 4) the Attorney General of the Federal District, 5) Magistrates of Circuit courts, and 6) District judges. *Id.*

101. U.S. CONST. art. III, § 2.

102. Contrary to United States Constitutional Law, no legal distinction between "controversies" and "cases" exists in the Mexican legal system, and these terms may be used interchangeably. Mexico's Constitution, however, utilizes the term "controversies" more frequently. CONST. arts. 103-05, 107.

103. CONST. arts. 1-29 (1917); see IGNACIO BURGOA, *LAS GARANTIAS INDIVIDUALES* (S.A. Porrúa ed., 1992) (indicating that Mexico's transformation is affected by constitutional reform with institutional renewal).

104. CONST. art. 103.

105. *Id.* art. 104, paras. II-V.

troversies" subject to the original jurisdiction of the Supreme Court of Justice: 1) between two or more States; 2) between one or more State and the Federal District (Mexico City); 3) between the powers of the same State; 4) between governmental organs of the Federal District on the constitutionality of their acts; 5) "conflicts" between the Federation and one or more States; and 6) "controversies" in which the Federation is a party, in the cases established by the law.¹⁰⁶ The most notable change of the recent amendment is in the jurisdiction of the Mexican Supreme Court. The amendments contained in the second paragraph of article 105, relative to the so-called "unconstitutionality actions" (*Acciones de Inconstitucionalidad*) are particularly important. The amendments provided a successful challenge to a federal, state, or municipal law initiated by a qualified legislative minority, may result not only in the abrogation of the statute in question (or the affected part of it), but also in a Supreme Court decision. For the first time in Mexico's history, the country will experience the same legal effects as are felt in the United States when the United States Supreme Court declares a statute unconstitutional.

II. ACTIONS OF UNCONSTITUTIONALITY

Known as "*amparo contra leyes*,"¹⁰⁷ the legal action challenging the constitutionality of a federal or state statute, or an international treaty, plays an important part in Mexico's legal system. In 1936, the *Ley de Amparo* (Federal Amparo Act) created this legal mechanism,¹⁰⁸ which empowered the *Pleno* and *Salas* of the Supreme Court to review Amparo decisions challenging the constitutionality of a "norm of a general character" (*i.e.*, a law or statute) or establishing "a direct interpretation" of a constitutional precept.¹⁰⁹ These cases, however, were subject to two limitations. First, only the aggrieved individual had standing to

106. *Id.* art. 105.

107. Domingo García Belaúnde, *La Acción de Inconstitucionalidad en el Derecho Comparado*, XLII REVISTA DE LA FACULTAD DE DERECHO DE MEXICO 61-75 (1992); see Jesús A. Arroyo Moreno, *La Fórmula de Otero y el Amparo Contra Leyes*, 20 JURIDICA 499 (1990-91) (discussing in depth the functioning of el Amparo Contra Leyes).

108. See LEGISLACION, *supra* note 28, at 480-81 (stating that officially the Federal Amparo Act is known as Ley Organica de los Articulos 103 y 107 de la Constitucion Federal [Organic Act of Articles 103 and 107 of the Federal Act] promulgated by President Zoro Cardenas and published in *D.O.*, Jan. 10, 1936).

109. LEGISLACION, *supra* note 28, at 298.

challenge the constitutionality of the law in question. Second, the legal effects of the Supreme Court judgment applied to no one but the aggrieved person.¹¹⁰

President Zedillo characterized the changes introduced in the new second paragraph of article 105¹¹¹ of the Constitution "as one of the most important innovations that [has] taken place in [Mexico's] legal order throughout its long history."¹¹² Without eliminating the legal features of the "Otero Formulation," (which will continue to apply in ordinary cases of *Amparo*), this constitutional change enables qualified minorities of legislative bodies at the federal, state, and municipal lev-

110. See BURGOA, *supra* note 88, at 121 (explaining that the Otero formula is a typical feature of Amparo proceedings which limits the effects of the federal judgment solely to the aggrieved party).

111. The amendment provides:

Art. 105: The Supreme Court of Justice of the Nation shall take cognizance, in accordance with the terms provided by the corresponding law (*Ley Reglamentaria*), of the following matters:

• • •

II. Of actions of unconstitutionality whose object is to pose the possible contradiction between a norm of a general character and this Constitution, *with the exception of those referring to electoral matters.*

The actions of unconstitutionality may be filed, within thirty natural days following the date of the publication of the norm, by:

a) The equivalent of thirty-three percent of the members of the Chamber of Deputies (*Cámara de Diputados*) of the Federal Congress, against federal laws or those of the Federal District (Mexico City) promulgated by the Federal Congress;

b) The equivalent of thirty-three percent of the members of the Senate (*Cámara de Senadores*), against federal laws or those of the Federal District promulgated by the Federal Congress, or of international treaties entered into by the Mexican State;

c) The Attorney General of the Republic, against laws of a federal, state or Federal District character, as well as international treaties entered into by the Mexican State;

d) The equivalent of thirty-three percent of the members of some of the State legislative organs, against laws promulgated by said organ; and

e) The equivalent of thirty-three percent of the members of the Assembly of Representatives of the Federal District, against laws promulgated by said Assembly.

The resolutions of the Supreme Court of Justice may only declare the invalidity of the challenged norms, *as long as they receive a majority of at least eight votes.*

CONST. art. 105, para. II.

112. *Iniciativa, supra* note 3, at 12.

els—including the Attorney General of the Republic (*Procurador General de la República*) and the Assembly of Representatives of the Federal District—to challenge the constitutionality of federal and state laws, and international treaties, by filing an “Action of Unconstitutionality” directly to the Supreme Court. Although the rationale behind this change has generally effected positive and progressive development, the tenor of this amendment has been unable to resolve a number of serious criticisms.

One criticism of the new amendment is that to exclude electoral laws from these types of challenges is simply “incongruent.” This critique is rooted in President Zedillo’s failure to fulfill his pledge to the principle of constitutional supremacy.¹¹³ A strong critic of this change, Professor Elisur Arteaga Nava, has asserted that in recent years, Mexican Constitutional Law has precluded the Supreme Court, whenever possible, from deciding electoral questions. This author adds that in Mexico today “there is no competent organ to declare federal electoral laws unconstitutional.”¹¹⁴

No legal justification exists for excluding electoral laws from this kind of legal action. Although Mexico has created a Federal Electoral Court (*Tribunal Federal Electoral*), with specialized jurisdiction over electoral questions, this court, examines and renders an opinion only on the legality of the elections, not on the constitutionality of the electoral laws. These legal questions should clearly fall within the jurisdiction of the Supreme Court of Justice in its new role as a constitutional court.

Some suggest that this constitutional change has been influenced by current forms in certain European countries, such as Austria, France, Spain, and Germany.¹¹⁵ In these countries, a qualified number of members of the legislative bodies, which generally form a part of the political opposition, have the right to challenge the constitutionality of laws before federal courts or other established organs of constitutional control. This new phenomenon has been described as the “Judicialization of Politics”—a manner of solving political conflicts through legal avenues.¹¹⁶

113. See *Reformas y Adiciones*, *supra* note 42, at 8 (stating that, “[t]his is incongruent . . . because it not only permits the existence of a body of laws exempt from constitutional control, but also because it leaves unfinished the recent evolution towards the ‘judicialization’ of electoral matters”).

114. See Elisur Arteaga Nava, *Las Nuevas Facultades de la Suprema Corte de Justicia de la Nación*, in *REFORMAS*, *supra* note 41, at 74, 94-95 (asserting that Mexico lacks a check on its federal electoral laws).

115. *Reformas y Adiciones*, *supra* note 42, at 7.

116. See Torbjorn Valliner, *The Judicialization of Politics, A World-wide Phenome-*

This change may pose a double problem. On the one hand, legislative minorities may attempt to convert their parliamentary defeats into court victories indiscriminately. On the other hand, constitutional courts may exceed their legal boundaries and become "substitute legislators."¹¹⁷ Obtaining the requisite equivalent of thirty-three percent poses another problem. Given the current composition of most of the legislative bodies, which are still controlled by the official political party, *Partido Revolucionario Institucional* (PRI), gaining the requisite thirty-three percent minority may be highly unlikely. Professor Arteaga Nava suggests that an easier and less risky solution may be for the minority to submit and approve "a legislative bill proposing to abrogate or invalidate" the statute in question.¹¹⁸

The right of the Attorney General to file these unconstitutionality actions appears to transform this high official, at least in principle, to the "guardian of the constitutionality of the laws of the nation." As long as the majority in the Federal Congress coincides with the political party of the Federal Executive (*i.e.*, the PRI), "[i]t is improbable that the Attorney General can exercise this right."¹¹⁹ Finally, the difficulty in obtaining the required "majority of at least eight out of eleven votes," or a "superqualified majority (seventy-three percent)"¹²⁰ of Supreme Court Justices, for a "declaration of invalidity" adds to the unlikelihood of judicial intervention.

What happens if six or seven of the Supreme Court Justices declare a given statute or an international treaty invalid? According to one theory, interpreting article 105, paragraph II, *a contrario sensu*, the "declaration of invalidity" *is not going* to have a binding effect. That is, in spite of the opinion of the legislative minority who challenged the constitutionality of said law or treaty, and despite the vote of the six or seven Supreme Court Justices who concurred with that minority, the challenged statute, or treaty, will continue to be effective and legally enforceable throughout Mexico.¹²¹

Given the delicate nature of these questions, the Federal Executive decided to address, and hopefully clarify and resolve, the legalities asso-

non, 15 INT'L POL. SCIENCE REV. 91 (1994) (discussing how judicial facilities have asserted a role in politics).

117. Reformas y Adiciones, *supra* note 42, at 7.

118. Arteaga Nava, *supra* note 113, at 99.

119. Reformas y Adiciones, *supra* note 42, at 8.

120. *Id.* at 9.

121. See Arteaga Nava, *supra* note 113, at 99-100.

ciated with these new actions of unconstitutionality through the special enactment of a specific *Ley Reglamentaria*.¹²² Article 72 of this statute provides that if the declaration of invalidity "is not approved by at least eight votes . . . the *Pleno* of the Supreme Court shall dismiss the action and order the matter to be sent to the archives."¹²³

Prior to Zedillo's amendment, paragraph I of article 105 enumerated, in general terms, six types of controversies over which the Supreme Court of Justice had original jurisdiction.¹²⁴ Several of these controversies parallel those enumerated in Article III, section 2 of the United States Constitution.¹²⁵ During most of this century, an intense governmental centralism has prevailed in Mexico. This phenomenon directly results from the virtual monopoly exercised throughout that country's political arena by its official party: PRI, who until recently, maintained complete control, eliminating any real opposition from other parties.¹²⁶ Thus, because the government's official party transformed Mexico into an undemocratic political system, most of these controversies did not reach the Supreme Court. In the words of a Mexican scholar, the controversies enumerated in article 105 of the Constitution were never tried before the Supreme Court, making article 105 "practically inoperative."¹²⁷

This assertion should be considered within the context of a country, whose most important government officials at the federal, state and municipal levels, are all members of the PRI. These officials include the President of the Republic; the members of his Cabinet; all federal judges, including the totality of the Supreme Court Justices (numbering twenty-six, prior to the reform); state governors; virtually all members of the Senate and of the House of Representatives; the members of the

122. See *Ley Reglamentaria*, *supra* note 96 (stating that this federal statute regulates the time period within which these actions must be filed; information to be provided in the initial motion; procedural aspects; judgments and so forth).

123. *Id.* art. 72.

124. See *supra* note 108 and accompanying text (listing the controversies subject to the original jurisdiction of the Supreme Court of Justice).

125. See LEYES, *supra* note 15, at 188, 623 (explaining that article 137, paragraphs I and IV, of Mexico's Federal Constitution of 1824 and the corresponding articles in the Federal Constitution of 1857, followed the text of the United States Constitution even more closely).

126. In recent years, other political parties have begun to gain some electoral victories. For example, currently, out of 31 States, only the following four have governors of National Action Party (*Partido Acción Nacional* or PAN): 1) Baja California, 2) Chihuahua, 3) Guanajuato, and 4) Jalisco.

127. *Reformas y Adiciones*, *supra* note 42, at 9.

diplomatic and consular corps, including the administrative personnel; and the municipal mayors in the overwhelming majority of the municipalities throughout that nation. These public servants are not only members of the PRI but, in accordance with Mexico's political tradition, all display the greatest deference for the opinions of the Federal Executive, the highest political leader of the PRI. Therefore, rather than take to the Supreme Court any of the controversies enumerated in article 105 of the Constitution, the customary and politically correct means of resolution is either directly by the President of the Republic or by the person who the President may designate to solve the problem—generally the Secretary of the Interior (*Secretario de Gobernación*) or the President of the PRI. Professor Arteaga Nava has observed that while “these controversies do take place in reality, no competent judicial authority exists to resolve them.”¹²⁸ Professor Arteaga Nava reasons that the state superior courts are not likely to be impartial, and suggests that the resolution of these disputes should lie within the jurisdiction of the federal courts. However, the intervention of the Supreme Court in these kinds of article 105 cases seems to be, in his opinion, out of proportion.¹²⁹

The detailed enumeration in the current text of article 105¹³⁰ of

128. Arteaga Nava, *supra* note 113, at 94.

129. *Id.* at 94. Professor Arteaga Nava anticipates that the passage of time will prove that these types of controversies are to be resolved by “other types of [federal] courts.” *Id.*

130. The Supreme Court of Justice of the Nation shall take cognizance, in accordance with the terms provided by the corresponding law (*Ley Reglamentaria*), of the following matters:

I. Of constitutional controversies which, with the exception of those relative to electoral matters, arise between:

- a) The Federation and a State of the Federal District;
- b) The Federation and a municipality;
- c) The Executive Power and the Federal Congress; said Power and any of the chambers of this Congress; or, in its case, the Permanent Commission (*Comisión Permanente*), either as federal organs or as Federal District organs;
- d) One State and another State;
- e) A State and the Federal District;
- f) The Federal District and a municipality;
- g) Two municipalities of different States;
- h) Two powers of the same State, on the constitutionality of their acts or general provisions (*disposiciones generales*);
- i) A State and one of its municipalities, on the constitutionality of their acts or general provisions;
- j) A State and a municipality of another State, on the constitutionality of their acts or general provisions;

these conflicts has no precedent in the constitutional history of Mexico.¹³¹ Its rationale may be the incipient change which is beginning to take place in the political landscape of that country. Over the last decade, Mexicans have pushed their country toward a most necessary and profound political reform. In general terms, this reform seems to be directed at two fundamental objectives. First, Mexicans favor an authentic democratic interplay in the political arena, rather than a political monopoly controlled by the PRI. The Mexican society is truly interested in pluri-partidism and in the introduction of a clean and fair political exercise. Mexicans are showing signs that they are interested in constructing a nation where genuine democracy is a reality.

Second, Mexicans are determined to take back the exaggerated power which has long been in the hands of the Federal government. This power has created a politically unbalanced nation—a country which has been subject to authoritarian centralism. Mexicans now demand a new type of federal executive—one that keeps a balanced relationship with the other two branches of government. At the same time, those same Mexicans demand a new kind of federalism which has a more fair and balanced interaction between the federal government and the States.

This desire for electoral reform, in recent years, has led to some electoral triumphs at the municipal and gubernatorial level, by some political parties, such as *Partido de Acción Nacional* (PAN) and *Partido Revolucionario Democrático* (PRD). In addition, because some constitutional changes have transformed the political representation in the Federal Congress, minority parties have accomplished a larger numerical presence in both the House of Representatives and the Senate. These innovations suggest the emergence of:

k) Two organs of government of the Federal District, on the constitutionality of their acts or general provisions.

As long as the controversies deal with general provisions of the States or of the municipalities contested by the Federation, of the municipalities contested by the States, or in the cases referred to in paras. c), h) and k) above, and the resolution of the Supreme Court of Justice declares them invalid, said resolutions shall have general effects when approved by a majority of at least eight votes.

In the remaining cases, the resolutions of the Supreme Court of Justice shall have effects solely with respect to the parties in the controversy.

CONST. art. 105.

131. CONST. art. 105, para. I; see Arteaga Nava, *supra* note 113, at 71-100 (providing a detailed legal and political analysis of the changes to this article). For the complete text of Article 105, see APPENDIX ONE.

a new social pact which, in the face of the system's decay, is searching for the initiation . . . of a process of institutional renewal, through a constitutional reform, leading towards a transformation promoting new forms of interrelations (*convivencia*) and government.¹³²

When President Zedillo made modifications to the federal judicial power—to article 105 of the Constitution, in particular—he no doubt considered them political changes.

Since the detailed enumeration of constitutional controversies is a new legal phenomenon, and procedurally so unexplored, in May 1995 a brand new set of procedural regulations (*Ley Reglamentaria*),¹³³ the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*), was established to govern issues not specifically addressed by these new regulations.¹³⁴ Given the novelty of this reglamentary act, the Supreme Court has not taken cognizance of any cases involving a constitutional controversy.¹³⁵

The reglamentary act provides the following answers to previously unanswered questions:

1. The parties in a constitutional controversy are: a) the plaintiff (*Actor*) who is the entity, power or organ initiating the controversy; b) the defendant (*Demandado*) who is the entity, power or organ who issued or promulgated the general norm, or performed the act object of the controversy; c) "third interested parties" (*Tercero o terceros interesados*), those entities, powers or organs referred to in paragraph I of article 105 of the Constitution who, "without being the plaintiffs or the defendants, may be affected by the decision to be rendered;" and d) the Attorney General of the Republic.¹³⁶

2. The President of Mexico may be represented legally by the Secretary of State (*Secretario de Estado*, or cabinet member); the Head of the Administrative Department, or the Government's Legal Counselor (*Consejero Jurídico del Gobierno*), as determined by the President himself, in conformity with the Organic Act of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*).¹³⁷

132. María Teresa Gómez Mont, *La Reforma de Justicia y sus Implicaciones Políticas*, in REFORMAS, *supra* note 41, at 170.

133. *Ley Reglamentaria*, *supra* note 96.

134. *Id.* art. 1. The Federal Code of Civil Procedure (C.P.C. *each state*) was published in *D.O.*, Feb. 24, 1942, and was amended as recently as 1988.

135. *Ley Reglamentaria*, *supra* note 96, art. 10.

136. *Id.* art. 10.

137. *Id.* art. 11. For the text of *Ley Orgánica de la Administración Pública Fed-*

3. The initial complaint (*Demanda*) should contain: a) the plaintiff's entity, power or organ, and the name and position of the public official legally representing it; b) the defendant's entity, power or organ, and the domicile; c) the interested third parties, entities, powers or organs, if any, and their domiciles; d) the general norm, or act, whose invalidity is demanded, as well as the official daily in which it was published, if any; e) any and all constitutional articles deemed to have been violated; f) a description of the facts or abstentions witnessed by the plaintiff and constituting the antecedents of the general norm or act whose invalidation is demanded; and g) the legal rationales for demanding the invalidity (*Conceptos de invalidez*).¹³⁸

4. Once the initial complaint is formally received, the President/Chief Justice of the Supreme Court of Justice (*Presidente de la Suprema Corte*) designates a Justice (*Ministro instructor*) to initiate the judicial processing of the case (*Poner el proceso en estado de resolución*).¹³⁹ This Justice determines whether based on its merits, the complaint should be admitted.¹⁴⁰ If the complaint is admitted, the designated Justice must serve notice to the defendant, who has thirty days to answer.¹⁴¹

5. Once the defendant answers the complaint, the plaintiff has an additional fifteen days to amend its complaint.¹⁴² The designated Justice may order the parties to explain any obscure or irregular portions of their respective motions. If the case appears to be especially sensitive or important, the Justice may notify the Attorney General of the Republic.¹⁴³

eral, see D.O., Dec. 19, 1976, as amended, in D.O. Dec. 28, 1994. Until now, constitutional controversies involving the federal government have been non-existent. Because of the changes made to the first paragraph of article 105 of the Constitution, this situation is likely to change. Among other considerations, Mexico will have to decide whether to create an office similar to that of the United States Office of the Solicitor General, or to restructure its office of the Attorney General of the Republic (*Procurador General de la Republica*). In the past, the Attorney General, in his capacity as "Abogado de la Nacion," has been directly involved in these matters. Mexico may want to become familiar with the origin and evolution of certain legal strategies utilized in cases before the United States Supreme Court, in particular, confessions of error and amicus curiae briefs. See WASBY, *supra* note 82, at 139, 145-48.

138. Ley Reglamentaria, *supra* note 96, art. 22.

139. *Id.* arts. 24-26.

140. *Id.* arts. 24-26.

141. *Id.* arts. 24-26.

142. *Id.* arts. 27-28.

143. *Id.* arts. 27-28.

6. Once the period for answering the initial complaint has elapsed, the Justice in charge of the case sets a date for the evidence hearing (*Audiencia de ofrecimiento y desahogo de pruebas*), which must take place within the following thirty days.¹⁴⁴

7. In case of a default, the Court is to "presume that the facts alleged in the motion are true (*ciertos*)," provided these facts "are directly attributed" to the parties in the case, except when there is evidence to the contrary.¹⁴⁵

8. The parties are allowed to submit all types of evidence, except those excluded by the law.¹⁴⁶ The Justice in question has the power to exclude any evidence that, in the Justice's opinion, "does not have a relation with the controversy or has no influence in the final decision (*No guarden relación con la controversia o no influyan en la sentencia definitiva*)."¹⁴⁷

9. Once the evidence hearing is concluded, pursuant to the Organic Act of the Federal Judicial Power, the designated Justice submits the pertinent draft resolution (*Proyecto de resolución*) to the full Court (*Tribunal Pleno*).¹⁴⁸

10. In conformity with Mexico's legal system on *Amparo* matters, the Supreme Court is to "correct the mistakes in the citation of [legal] precepts" and, in particular, supplement any deficiencies to be found in the initial complaint, the answer, the concluding remarks (*Alegatos*) or the statement of the injurious consequences suffered (*Agravios*).¹⁴⁹ In *Amparo* proceedings, this initiative, undertaken *ex officio* by federal courts, to supplement and even correct defective or incomplete motions filed by the parties, is known as "*Suplencia de la Queja*."¹⁵⁰

11. When controversies relate to general provisions of the States or of municipalities, contested by the Federation; or of municipalities contested

144. *Id.* art. 29. The designated Justice may extend this term, at the Justice's discretion, given the importance or implications (*Importancia y trascendencia*) of the case.

145. *Id.* art. 30.

146. *Id.* art. 31.

147. *Id.* art. 31.

148. *Id.* art. 36. "The resolutions of the *Pleno* of the Supreme Court of Justice shall be taken by unanimity or majority of votes, save the cases provided in Section I, penultimate paragraph, and Section II, of Article 105 of the Constitution, when a majority of eight votes of the justices who are present shall be required." L.O.P.J.F. art. 7.

149. Ley Reglamentaria, *supra* note 96, arts. 39-40.

150. *Id.* arts. 39-40.

by the States; or in cases referred to in paragraphs c, h, and k of Section I of article 105 of the Constitution, and the resolution of the Supreme Court of Justice declares them invalid (*Inválidas*), "said resolution shall have general effects when approved by a majority of at least eight votes."¹⁵¹ However, when this vote is not obtained, "the *Pleno* of the Supreme Court of Justice shall declare said controversies dismissed (*Desestimadas*) In all of the other cases, the resolutions shall have effects solely with respect to the parties in the controversy."¹⁵²

12. When the Supreme Court declares a general norm invalid, the President of the Court shall order its publication in the Official Daily of the Federation (*Diario Oficial de la Federación*), and in the official publication where said norm appeared.¹⁵³

13. Supreme Court decisions shall become legally effective following the date as determined by the Court. The declaration of invalidity (*Declaración de invalidez*) shall have no retroactive effect, except in penal matters, where general principles and the applicable legal provisions shall control.¹⁵⁴

To observers of the evolution of Mexico's legal system, especially to Mexican judges and legal practitioners, the Supreme Court's power to make declarations of invalidity with "general effects" to be valid *erga omnes* (globally), indeed constitutes a most unprecedented development in Mexico's constitutional history. This may be yet another step towards conforming the highest court to its original model. Predicting how the new Mexican Supreme Court will weigh and decide these constitutional controversies presents great difficulty. The constitutional requisite of obtaining "a majority of at least eight votes," out of a total of eleven—accurately characterized as a "qualified supermajority (seventy-three percent)"—may become an insurmountable obstacle.¹⁵⁵

III. THE COUNCIL OF FEDERAL JUDICIARY

Since its creation in 1824, the most persistent problem of the Supreme Court of Mexico has been case backlog (*Rezago*). Because of the numerous amount and complexity of cases, the Court cannot make decisions in an efficient and expeditious manner. The relative slowness

151. *Id.* art. 42.

152. *Id.* art. 42.

153. *Id.* art. 44.

154. *Id.* art. 45.

155. CONST. art. 17.

with which the Supreme Court decides its cases appears to conflict with one of Mexico's "individual rights," enshrined in article 17 of the Constitution, that every person has a right to prompt resolution of conflicts.¹⁵⁶ As in the United States, the *Rezago* in Mexico can be attributed to two causes. First, ordinary cases manage to reach the Supreme Court with relative ease. Second, since the establishment of this Court, Justices must deal with certain administrative tasks that demand their very personal attention and tend to distract them from their truly judicial decision-making duties.

Imitating the United States, in 1951 Mexico decided to create Circuit Collegiate Courts as federal appellate organs. The Circuit courts would relieve the Supreme Court of Justice of its large docket, as a substantial part of the docket was transferred to the lower Circuit courts.¹⁵⁷ According to Dr. Fix Zamudio, as soon as the first Collegiate Courts were created, the Supreme Court of Justice transferred 27,000 *Amparo* suits to them.¹⁵⁸ This change, however, was clearly insufficient. By 1960, the new *Rezago* of the Supreme Court had reached over 8000 cases, most of them involving *Amparo* quest.¹⁵⁹ In his recent *Iniciativa*, President Zedillo acknowledged that, "Thanks to the sustained effort of the Supreme Court . . . by the end of this year [1994] the *Rezago* was almost non-existent."¹⁶⁰

Evidently, the creation of the Council of the Federal Judiciary was designed to address the second cause of the *Rezago*. For some authors,

156. *Id.* art. 17 (emphasis added).

[E]very person has the right to be imparted justice by courts which shall be expeditious for imparting it in the terms and conditions provided by the laws, *rendering their resolutions in a prompt, complete and impartial manner*. Their service shall be gratuitous, so judicial costs are, as a consequence, prohibited. The federal and local laws shall establish the means necessary to guarantee the independence of the courts and the full enforcement of their resolutions.

Id.

157. See Fix Zamudio, *supra* note 16, at 649, 660-63, in D.O., Feb. 19, 1951 (discussing the creation of these circuit courts in Mexico (*Tribunales Colegiados de Circuito en Materia de Amparo*), as part of the "Alemán Reform"). Dr. Fix Zamudio asserts that "[t]he creation of these . . . courts, even though it was not expressly said, was inspired by the judicial organization of the federal courts of the United States in 1891, when the Circuit appellate courts were established precisely to assist the federal Supreme Court with the large number of cases that impeded its proper functioning." *Id.* at 663 (emphasis added).

158. *Id.* at 664.

159. *Id.* at 665.

160. *Iniciativa*, *supra* note 3, at 8.

“the creation of this specialized organ of government and administration, given the dimensions and complexity the Federal Judicial Power had assumed, was urgent.”¹⁶¹ Others felt the need for this type of organ since early 1917, when Mexico decided to eliminate its Secretariat of Justice (*Secretaría de Justicia*).¹⁶² Most specialists associated with the Federal Judicial Power in Mexico approved of the creation of this new organ.¹⁶³ In this regard, President Zedillo asserted:

[T]he initiative proposes that the administrative attributions [of the Supreme Court of Justice] be assigned to a newly created organ. This organ is to be composed by persons designated by the three Powers of the Union. [They] are to exercise their functions for a limited period of time and would be substituted through a staggered terms system. With the freeing of its administrative workloads, the Plenary of the Supreme Court shall have more time to discharge its jurisdictional functions from now on. This administrative organ shall be responsible for guarding the independence of judges and magistrates, and shall take care that the judicial career principles be strictly applied at all times, in order to guarantee an adequate evaluation of those persons who are to assume the jurisdictional function.¹⁶⁴

The composition, functions and administrative structure of the Council of the Federal Judiciary, created as a result of an amendment to article 100 of the Constitution, are presented in even greater detail in the Title Six of the Organic Act of the Federal Judicial Power.¹⁶⁵

A. COMPOSITION

Article 100 of the Constitution provides that the Council shall consist of seven members, known as counselors (*Consejeros*). One shall be the President of the Supreme Court of Justice, who shall also preside over the Council.¹⁶⁶ The next three members shall include a magistrate of the Circuit Collegiate Courts, a magistrate of the Unitary Circuit Courts,

161. Reformas y Adiciones, *supra* note 42, at 5.

162. This Secretariat was derogated by the article 14 Transitory, of the Presidential decree promulgating the then recently formulated Federal Constitution of 1917. See D.O., Feb. 5, 1917; see also Omar Guerrero Orozco, *La Secretaría de Justicia, Eslabón Perdido de la Administración Pública Mexicana?*, in REFORMAS, *supra* note 41, at 149-65.

163. REFORMAS, *supra* note 41, at 11, 21, 27.

164. *Iniciativa*, *supra* note 3, at 6.

165. L.O.P.J.F. arts. 68-128.

166. *Id.*

and a district judge, who is elected by a lottery system (*Insaculación*).¹⁶⁷ The Council will also include two counselors, one of which is designated by the Senate and one by the President of the Republic.¹⁶⁸ The designated members shall be persons who "have distinguished themselves because of their capability, honesty and honorability in the exercise of their legal activities."¹⁶⁹ Counselors must meet the same requirements as Supreme Court Justices.¹⁷⁰

Except for the President of the Council, the remaining counselors will serve five years in their position. Their appointments shall occur in a staggered manner, and they may not be appointed for a new term. The Counselors are to exercise their duties "with independence and impartiality" and during their tenure, may "only be removed under the terms of Title Four of this Constitution."¹⁷¹ The President of the Council is empowered to have legal representation, initiate matters that correspond to the Plenary, distribute cases among the other members, preside over the sessions, lead debates and oversee the function of subordinate organs, inform the Senate of any vacancies at the Council, grant licenses, sign the resolutions (*resoluciones*) and agreements (*acuerdos*), and so forth.¹⁷²

B. FUNCTIONS

According to the Constitution, "the administration, vigilance and discipline of the Federal Judicial Power, with exception of the Supreme Court of Justice of the Nation, shall be carried out by the Council of the Federal Judiciary, in the terms established by the laws and in conformity with the bases provided by this Constitution."¹⁷³ The Council functions in Plenary (*Pleno*) or through the work of Commissions. Every year, it shall conduct two sessions: the first, from January until mid-

167. *Id.*

168. *Id.*

169. CONST. art. 100; L.O.P.J.F. art. 69.

170. CONST. art. 95 (enumerating these requirements).

171. *Id.* Title Four, articles 108 through 114, of the Constitution refers to *The Responsibilities of Public Servants*. This legal responsibility is the same as the one that applies to Supreme Court justices. See *id.* art. 110 (identifying officials of the Federal Judiciary subject to impeachment); *supra* note 102 and accompanying text (discussing article 110).

172. L.O.P.J.F. art. 85, paras. I-X.

173. CONST. art. 100; L.O.P.J.F. art. 68.

July; and, the second, from August until mid—December.¹⁷⁴ The Council's Plenary is formed by seven counselors, but the presence of five is sufficient to be in session. Generally, the Plenary's "ordinary sessions" are private.¹⁷⁵

The Council's Commissions may be permanent or temporal, and its composition may vary as determined by the Council's Plenary.¹⁷⁶ Each Commission shall consist of three members: the Judicial Power shall supply one, and the Executive and the Senate shall designate the other two.¹⁷⁷ If a Commission fails to reach a resolution, the matter shall be transferred to the Council's Plenary.¹⁷⁸ Pursuant to the Organic Act, the Council is to have the following five commissions: 1) Administration, 2) Judicial career, 3) Discipline, 4) Creation of new organs, and 5) Description.¹⁷⁹

The Council's principal functions, designated as "Attributions" (*Atribuciones*) in the Organic Act, include:

- 1) to determine the number and the territorial boundaries of the Circuits into which the territory of Mexico is divided;
- 2) to determine the number and the "specialization" by subject matter of the Collegiate and Unitary courts in each Circuit;
- 3) to determine the number, territorial boundaries, and specialization, etc., of District courts;
- 4) to appoint the Circuit magistrates and District judges, and to resolve on their ratification, adscription and removal;
- 5) to decide on the resignations submitted by Circuit magistrates and District judges;
- 6) to decide on the "forced retirement" (*Retiro forzoso*) of magistrates and judges;
- 7) to suspend magistrates and judges;
- 8) to resolve on administrative complaints (*Quejas administrativas*) and on the legal responsibility of public servants in the judiciary;
- 9) to approve the annual spending budget of the Federal Judicial Power to be sent to the President of the Supreme Court;
- 10) to formulate the guidelines (*Bases*) so "the acquisitions, leasings and transfers of real estate, rendering of services on any nature and construction contracting . . . are in conformity with Art. 134 of the Constitution."

174. L.O.P.J.F. arts. 74-76.

175. *Id.*

176. *Id.* arts. 77-80.

177. *Id.*

178. *Id.*

179. *Id.* art. 77.

- 11) to establish the criteria for the modernization of the court's infrastructure;
- 12) to resolve certain labor conflicts;
- 13) to periodically convoke national or regional conferences for the benefit of the judiciary;
- 14) to administer the movable and immovable assets of the Federal Judicial Power; and
- 15) to formulate a listing of the persons who may render professional legal services as "Experts" (*Peritos*) before the organs of this Power, etc.¹⁸⁰

The Organic Act further specifies that decisions by the Council "shall be made by the vote of the majority of the Counselors present," and relate only to certain explicitly enunciated matters.¹⁸¹

C. THE INSTITUTE OF THE JUDICIARY

During the last decade, the organs of the Federal Judicial Power have grown tremendously.¹⁸² In every year since the 1980s, an average of twenty-one federal courts have been created.¹⁸³ This increase has posed a serious problem for the administration of justice, as well as for the training and professional specialization of magistrates and judges. This problem has resulted in delayed and unfair justice, and a growing improvisation on behalf of judges.¹⁸⁴ On this delicate question, President Zedillo stated that:

In order to elevate in the future, the professional quality of those who will have to impart justice, this reform aspires to raise to a constitutional rank the judicial career, so in the future the appointment, adscription and removal of judges and magistrates will be subject to general, objective and impartial criteria to be determined by the laws on this matter.¹⁸⁵

To accomplish this goal, the Institute of the Judiciary, an auxiliary organ of the Council, is in charge of the "research, development, training and updating of the members of the Federal Judicial Power, and of those who aspire to belong to it."¹⁸⁶ The Institute may have regional

180. *Id.* art. 81, *passim*. This article lists 41 specific functions.

181. *Id.* arts. 76, 81 (listing these specific matters).

182. *Iniciativa, supra* note 3, at 18.

183. *Id.*

184. *Id.*

185. *Id.*

186. L.O.P.J.F. art. 92. The functions and powers of this Institute are to be controlled by "the norms to be determined by the Federal Council of the Judiciary in the

offices (*extensiones regionales*), support programs and courses to benefit local judicial powers, and enter into arrangements with Mexican universities to assist in the implementation of these activities.¹⁸⁷

This Institute has the support of an Academic Committee (*Comité Académico*).¹⁸⁸ This Institute is expected to implement "programs and courses" designed:

- 1) To develop a practical knowledge regarding the procedures and matters under the jurisdiction of the Council of the Federal Judiciary; 2) To perfect certain technical skills; 3) To strengthen and specialize in matters dealing with the applicable law, doctrine and jurisprudence (*Jurisprudencia*); 4) To perfect techniques on legal analysis, interpretation and argumentation; 5) To teach administrative techniques relating to the jurisdictional function; 6) To develop legal vocations in favor of a judicial career, and the ethical values associated with it; and, 7) To promote academic exchanges with institutes of higher education.¹⁸⁹

The need to elevate the legal preparation and training of judges and magistrates, including a strong and indispensable ethical component, is also found in the legal education system. From an academic viewpoint, the legal education system must be modernized and substantially revised. The system must be brought up to date with the latest developments in selected legal areas which affect the country on domestic and international levels, with the recent scientific and technological accomplishments, and must be reoriented and developed on a sounder and more efficient financial base.

A profound curricular reform must be accompanied with the establishment of academic and clinical cadres devoted to teaching on a full-time basis. Such a reform should include the introduction of clinical programs emphasizing: drafting of legal documents, legal research and oral advocacy, special seminars addressing domestic and international legal areas close to Mexico's national priorities, modern legal libraries, and a gradual emergence and diversification of more modern and varied teaching textbooks—including complementary didactic materials and electronic data banks.

Law schools and other academic institutions in Mexico, including the Institute of the Judiciary, may want to gather information and evaluate some of the academic, clinical and training programs available to law

respective regulations." *Id.*

187. *Id.*

188. *Id.* art. 94.

189. *Id.* art. 95.

students, judges, professors, judicial administrators, and governmental legal officials, currently offered by United States law schools and other training institutions. A revision of this nature may lead to profound changes in the legal profession. Such changes may include unprecedented notions such as the introduction of a bar exam,¹⁹⁰ a new role of a bar association,¹⁹¹ and the function of public notaries.¹⁹² In recent years, the number of cases on international civil litigation between Mexico and the United States has increased significantly, principally as a result of NAFTA¹⁹³ and the modernization of Mexico's rules on foreign investment, conflict of laws, and other legal areas.¹⁹⁴ Members of

190. There has never been a bar exam in Mexico. After the student receives a law degree from an accredited law school, the Secretariat of Public Education (SEP), through its General Directorate of Professions, extends the law graduate a "*Cédula Profesional*." This *cédula* is a type of federal permit or patent which authorizes the beneficiary to render professional services as an attorney at law (*Licenciado en Derecho*) anywhere in Mexico. However, the academic quality of most law graduates has been decreasing considerably over the last decades. This has prompted the idea that some type of examination should be introduced in Mexico to test the academic and professional competency of law graduates prior to practicing as an attorney.

191. In Mexico, bar associations (*Barras y Colegios de Abogados*) are quite different from their counterparts in the United States. *Barras y Colegios* are voluntary professional associations of attorneys. Their activities principally consist in organizing lectures, conferences and symposia for the benefit of their members, similar to the Continuing Legal Education (CLE) programs in this country. Recently, some ideas have been advanced to change the nature and professional scope of the *Barras y Colegios*, in order to transform them into obligatory associations designed, for example, to monitor the professional competency and even the ethical standards of its members.

192. Public notaries (*Notarios públicos*) play a crucial role in most civil, corporate and fiscal areas of Mexico's legal system. They not only serve as legal counselors to Mexican attorneys but also act on behalf of the government to verify compliance with certain legal provisions in tax, real estate and immigration law questions. Endowed with the power of public faith (*Fé Pública*), the professional involvement of public notaries is legally indispensable for the conduct of certain business transactions. These vast powers have given public notaries a most privileged position in Mexico. Over the last decade, the federal government has adopted a number of measures directed at opening a large legal arena which has been almost exclusively controlled by public notaries since its inception. This is being done by enlarging the scope of the functions performed by public brokers (*Corredores públicos*) in the commercial legal arena. In certain areas, the legal powers of *Corredores* closely parallel those of the *Notarios*. This slow and gradual change attempts to democratize the work and authority of "*Fedatarios públicos*," performed in Mexico by both *Notarios* and *Corredores*.

193. North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 605 (1993).

194. See generally Jorge A. Vargas, *Conflict of Laws in Mexico: The New Rules*

Mexico's Federal Judicial Power, including the Supreme Court of Justice, are interested in learning about specific aspects of the United States legal system. Therefore, certain American law schools appear to be singularly qualified to expand and complement the professional and academic legal training of Mexican magistrates and judges in specific areas of United States law, especially those directly related to their judicial work.

A solid legal and professional formation is indispensable to guarantee a competent, efficient and honest judicial system of justice. Mexico has desperately needed this kind of system for decades. Most recently, President Zedillo, in his *National Development Program, 1995-2000*, clearly identified this problem.¹⁹⁵ The special emphasis Zedillo is placing upon the federal judiciary, the establishment of a national security system, and the professionalization of both judges and police forces, has led legal specialists to suggest that these changes are only the beginning.¹⁹⁶ They are convinced that the sanitization, modernization and professionalization of the system of justice in Mexico will be attempted before the end of the century. The complete elimination of the pervasive corruption that has long prevailed in governmental circles at all levels, including judges and magistrates—especially those in the criminal field—is the unanimous clamor of the Mexican people. Today, this clamor has become Mexico's national imperative.¹⁹⁷

Introduced by the 1988 Amendments, 28 INT'L L. 659 (1994) (discussing "international procedural law" as it relates to international civil litigation between Mexico and the United States); Jorge A. Vargas, *Enforcement of Foreign Judgments in Mexico: The 1988 Rules of the Federal Code of Civil Procedure*, 14 NW. J. INT'L L. & BUS. 376 (1994) (discussing Mexico's adoption of codificatory instruments at the international level to regulate conflict of laws questions).

195. See *Por un Estado de Derecho y un País de Leyes, President Zedillo's Plan, Section 2*, in D.O., May 31, 1995, at 17-28 (presenting a platform for President Zedillo). "National Development Plans" are made public by each Mexican President at the beginning of his six-year term. Politically, they may be considered as a "presidential platform" or as the personal political program of the Federal Executive. During his administration, the President is publicly committed to implement the programs for the benefit of the Mexican people.

196. See REFORMAS, *supra* note 41, *passim* (illustrating the opinions of Mario Melgar Adalid, Juan de Dios Castro Lozano, Máximo Carvajal Contreras, Arnaldo Córdova, María Teresa Gómez Mont, Alonso Lujambio Irazabal).

197. *Id.*

Mexican experts¹⁹⁸ assert that the tragic deaths of the PRI Presidential candidate Luis Donaldo Colosio,¹⁹⁹ Cardinal Juan Manuel Posadas,²⁰⁰ and the PRI politician José Francisco Ruiz Massieu²⁰¹ in the past two years have mainly served to heighten Mexico's attention to the deep and pervasive problems that have chronically existed in that system. Although these shocking assassinations took Mexico by surprise, a fair and professional system of justice is considered to be in place and to operate effectively not when it applies to the powerful, the wealthy and the famous, but when it applies the law and renders justice to the millions of ordinary Mexicans, and in particular to the poor, the ignorant and the weak, including the indigenous peoples of that country.²⁰²

The current attempts of the Mexican government to extradite Mario Ruiz Massieu,²⁰³ a former Deputy Attorney General, to file criminal charges concurrently against the brother of a former Mexican President for his alleged involvement in the assassination of José Francisco Ruiz Massieu,²⁰⁴ and to investigate the President of the Superior Court of the Federal District (*Presidente del Tribunal Superior de Justicia del Distrito Federal*) for his possible implication in the death of a Mexico City Superior Court magistrate,²⁰⁵ illustrate the monumental challenge

198. See Arnaldo Córdova, *Perspectivas de la Nueva Justicia*, in REFORMAS, *supra* note 41, at 129, 134-37.

199. See Todd Robberson, *Judge Frees 2 Suspects In Colosio Assassination; Mexican Efforts to Clear Up Cases Stymied*, WASH. POST, July 9, 1995, at A21 (discussing the different theories surrounding the investigation of the Colosio assassination).

200. See Todd Robberson, *Ex-Prosecutor Assassinated in Guadalajara; Victim Had Headed Probe in '93 Slaying of Cardinal*, WASH. POST, May 11, 1995, at A31 (suggesting that there is a high probability that Posada's death was deliberate rather than an accidental shooting pursuant to cross-fire).

201. Juanita Darling, *Killer of No. 2 PRI Official Gets 50-Year Term in Mexico*, L.A. TIMES, Mar. 22, 1995, at A1 (reporting on the convictions of the men who murdered Francisco Ruiz Massieu).

202. See Jorge A. Vargas, *NAFTA, the Chiapas Rebellion and the Emergence of Mexican Ethnic Law*, 25 CAL. W. INT'L L.J. 1, 43-52 (1994) (discussing Mexican legal policies toward indigenous peoples).

203. See Robert L. Jackson & Juanita Darling, *U.S. Judge Won't Extradite Former Mexico Official*, L.A. TIMES, June 23, 1995, at A1 (reporting that a United States magistrate has refused to extradite former Attorney General Mario Ruiz Massieu).

204. See Tim Golden, *Ruling on Mexico Case: Score One for Salinas Inc.*, N.Y. TIMES, June 24, 1995, A5 (indicating that both Massieu and Salinas have been implicated in the assassination).

205. See Diego Cevallos, *Mexico: Murder of New Judge Brings New Political Upheaval*, June 21, 1995, Inter Press Service, 1995 WL 2261896 (discussing the murder of Superior Court Magistrate Abraham Polo Uscanga and the ensuing investiga-

President Zedillo faces to transform radically the justice system in his country.

D. THE COUNCIL OF THE FEDERAL JUDICIARY:
A EUROPEAN NOTION TRANSPLANTED TO MEXICO

As part of the Western legal tradition, one may recognize two separate systems created to guarantee the independence and impartiality of the judges and the courts. One, the judicial system developed by the common law tradition, consists of features created by the United States which place this responsibility upon the shoulders of the courts themselves, ordinarily those ranked at the highest level. The other, a civil code system, leaves the vigilance of the judge's independence and impartiality in a special organ, usually the executive power, and traditionally known as the Ministry of Justice.²⁰⁶ This system has flourished in continental Europe, a bastion of the civil legal tradition, especially during the last century.

After the Second World War, several European countries initiated a trend by creating the so-called "Superior Councils of the Magistrature" or "Superior Councils of the Judiciary." These new organs reduced the powers traditionally given to Ministries of Justice, and shifted to the court system functions considered to be eminently administrative and not judicial *per se*. Dr. Fix Zamudio suggests that "the self-government of the magistrature" (*autogobierno de la magistratura*)²⁰⁷ adequately describes this trend.

tion).

206. See HÉCTOR FIX ZAMUDIO, MEMORIA DEL COLEGIO NACIONAL SEPARATAS 43-75 (1992) (reviewing these special organs in Europe and Latin America).

207. *Id.* at 44.

In recent years, France,²⁰⁸ Italy,²⁰⁹ Portugal,²¹⁰ Turkey²¹¹ Greece,²¹² and Spain²¹³ have undertaken special administrative efforts in this direction. The emergence of these new organs produced a prompt and similar reaction in Latin America, where several countries enacted legislation to create similar entities. According to the composition and functions of these new organs, Dr. Fix Zamudio divided this legislation into three phases: 1) the introduction of this trend to South America, initiated by Colombia (1955), Venezuela (1961), Perú (1969), Brazil (1979), and Uruguay (1981); 2) a restructuring of the trend, taking place in Perú (1969, as amended in 1979 and 1993), El Salvador (1983), and Panamá (1987); and 3) the latest trend, currently represented by Costa Rica (1989), Colombia (1991), Paraguay (1992), Bolivia (1994), Argentina (1994), and now Mexico (1995).²¹⁴

Mexican scholars are of the general opinion that, although these South American trends exercised some degree of influence in Mexico, the recent creation of its Council of the Federal Judiciary was principally patterned after Spain's General Council of the Judicial Power (*Consejo General del Poder Judicial*).²¹⁵ Given the limited scope of this article, no attempt shall be made to conduct a comparative analysis between these two corresponding organs in Spain and Mexico. Suffice it

208. CONST. arts. 83-84 (1946) (France) (creating the Superior Council of the Magistrature); *see also* CONST. art. 65 (1958) (France) (corresponding to Regulations of Dec. 22, 1958, modified on Feb. 5, 1994) (expanding the content of the articles by special legislation of Feb. 1 and 22, 1947).

209. COST. [Constitution] arts. 104-105 (Italy) (creating Italy's *Carta Republicana* and the Superior Court of the Magistrature); *see also* regulations of Mar. 24, 1958, 1975, and 1981.

210. CONST. art. 223 (1976) (Portugal) (creating a similar organ with the same denomination). Two special regulations have been enacted: a) the Statute of Judicial Magistrates of Dec. 31, 1976; and b) the Law 85-77 of Dec. 13, 1977, arts. 139-86.

211. CONST. arts. 143-44 (1961) (Turkey) (creating an organ with the same denomination).

212. CONST. (1975) (Greece) (creating the "Supreme Council of the Judiciary").

213. C.E. [Constitucion] (1978) (Spain) (creating Spain's General Council of the Judicial Power, which is currently governed by the Organic Act of the Judicial Power (*Ley Orgánica del Poder Judicial*) of July 1985).

214. *See* FIX ZAMUDIO, *supra* note 202, at 51-69 (detailing the several phases of this new type of legislation).

215. *See* Mario Melgar Adalid, *El Consejo de la Judicatura Federal y la División de Poderes*, in REFORMAS, *supra* note 41, at 117; José Luis Soberanes Fernández, *El Consejo de la Judicatura Federal a la Luz del Derecho Comparado*, in REFORMAS, *supra* note 41, at 213.

to say that the legal literature in Mexico at this point is directed at addressing the following intriguing questions:

- 1) What is the legal nature of Mexico's Council? Does it belong to the Judicial Power or to the Executive? The general impression is that the Council of the Federal Judiciary forms a part of the Judicial Power, although it results from a concurrent exercise of these two powers,²¹⁶ and
- 2) How is this Council of the Federal Judiciary, considering its direct European legal roots, going to function in a country such as Mexico? Again, only time will tell.

Due to the increasing volume of administrative work that is generated within Mexico's federal judicial system every year, the number of counselors—now limited to only seven—is clearly insufficient.²¹⁷ The appointment of counselors who come from the judicial ranks should be improved. The current system (*Insaculación*) guarantees impartiality, but not professional capability, in the exercise of these new and delicate tasks.²¹⁸

In Mexico, as a rule, jurists or politicians tend to introduce legal innovations at a federal level, usually at Mexico City. The Council of the Judiciary, however, constitutes the exception to the rule. The northern states of Sinaloa²¹⁹ and Coahuila²²⁰ introduced this Council at the state level in 1990 by an amendment to their respective local judicial statutes. These states instituted this action years before President Zedillo submitted his initiative to the Federal Congress.

IV. THE IMPACT OF THE SUPREME COURT OF JUSTICE UPON MEXICO'S SOCIETY

From functional and structural viewpoints, undeniable similarities exist between Mexico's Supreme Court of Justice and the United States counterpart. These similarities, however, may be more cosmetic than real. Throughout its history, especially since the early years of the Marshall Court, the Supreme Court of the United States has held a unique power:

216. See Mario Melgar Adalid, *El Consejo de la Judicatura Federal y la Division de Poderes*, in REFORMAS, supra note 41, at 117, 120.

217. Reformas y Adiciones, supra note 42, at 6.

218. *Id.* at 6.

219. See SINALOA CONST. arts. 94, 97 (as amended in 1988 and 1990); see also Organic Act of the Judicial Power of the State of Sinaloa, D.O., Apr. 10, 1995, arts. 79-80.

220. See Organic Act of the Judicial Power of the State of Coahuila, in D.O., Dec. 11, 1990.

the power to touch, transform and direct the most fundamental aspects of American life. At some point in time, decisions of the United States Supreme Court significantly affect virtually all people or entities.²²¹

The United States Supreme Court has jurisdiction over the following areas: inter-governmental relations, the economy, free speech, criminal rights, racial questions, civil liberties, religion, constitutional rights and due process, reproductive questions, ethnic minorities, science and technology issues, civil rights, war powers and international affairs. The Court not only renders judicial decisions, but, more importantly, formulates decisions that quickly become public policies for the entire nation. Judgments may dictate the flow of activities and movement of the country, as well as the color and shade of its societal values.

Once the decision-making reaches a level that incorporates public policy, however, all similarities between these two courts come to an end. Decisions of the Supreme Court of Mexico have not touched an infinite number of areas. In a manner of speaking, Mexico's Supreme Court is today, and has been for a long time, the highest judicial organ whose decisions may affect entrepreneurs and attorneys, for example, but not the Mexican people as a whole, or Mexico as a nation.

Unlike the Supreme Court of the United States, Mexicans do not perceive the Supreme Court of Mexico as a judicial institution having the power to influence social, political, and economic forces. Mexico has never had a decision like *Marbury v. Madison*. Yesterday, and even today, citizens question the political status of the weakest of the three official branches, the Supreme Court of Justice, as a real "power."

The rebirth of the Supreme Court of Justice of Mexico is a constructive development that is the beginning of a profound reform and modernization of the system of justice. Therefore, in its new role as a truly constitutional court, the question arises as to whether the Supreme Court may start to produce decisions with far reaching implications, from social, political and economic perspectives, designed to foster the recent trend favoring modernization and progress; in other words, a Supreme Court which operates independently from the Federal Executive.

No one questions that the Supreme Court will have a vital, and clearly pivotal role in turning Mexico into a "Law and Order" country

221. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) (holding that women have a right to privacy in determining whether to end a pregnancy); *Baker v. Carr*, 369 U.S. 186 (1962) (holding that the Court must give deference to the Executive Branch when dealing with political questions); *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (holding that in racial segregation, separate is inherently unequal).

(*Estado de Derecho*). The new Supreme Court of Mexico has opened the door into a completely new judicial era. Given the serious financial crisis triggered at the initiation of President Zedillo's administration, the new Court is likely to devote some of its time to resolving economic questions, especially questions associated with the NAFTA. In a way, these questions may be reminiscent of the issues the United States Supreme Court had to resolve in the period of 1865 to 1937.

Questions arise as to whether this new Court will move away from economic issues and address other important issues concerning civil liberties, freedom of expression, religion, and equal treatment of ethnic minorities. Another tier of legal issues consists of more practical topics, including the right of counsel, seizure practices, and the questioning of suspects. Women's and children's rights, environmental questions, and immigration law represent another set of legal priorities.

The newly created Supreme Court in Mexico may be politically and legally placed in the same situation as the United States Supreme Court at the very beginning of the Marshall Court. To a large extent, Justice Marshall's wisdom and determination led to the creation of the Supreme Court as it is known today. If Mexico's Supreme Court follows the same historic path as did the United States Supreme Court, it may take its most luminous step toward resurrection.

CONCLUSION

The review and analysis of the 1995 changes to the Supreme Court in Mexico, made by President Zedillo through his first legislative initiative to amend the Constitution, may lead to these conclusions, advanced from their two most salient but contrasting perspectives: 1) from their purely judicial nature; and 2) from their political dimension.

A. FROM THEIR PURELY JUDICIAL NATURE

This legal reform represents the latest attempt to convert the Supreme Court of Mexico into a true constitutional court. Pursuant to its new functions, this highest tribunal is vested with power to interpret and enforce the Constitution as law. In other words, it has become the ultimate interpreter and enforcer of the Mexican Constitution. The Zedillo amendment moves beyond the prior, but limited, reform initiated by President Miguel de la Madrid in the late 1980s, when decisions on constitutional control questions were reserved to this high tribunal.²²²

222. See Ignacio Carrillo Prieto, *Renovacion Constitucional y Sistema Politico*, in

Within this judicial context, at least three innovations have especially attracted the attention of Mexican constitutional law experts who have not yet ceased in commenting, nor in criticizing these changes.

1. Unconstitutionality Actions

This type of action is unanimously characterized as one of the most important "constitutional innovations" introduced by the Zedillo reform. Pursuant to this change, a qualified minority in legislative bodies at the federal and state levels, have been given the right to challenge directly, before the Plenary of the Supreme Court of Justice, the constitutionality of a federal or state statute, or an international treaty. When the unconstitutionality is declared by a majority of a least eight votes, the statute or treaty in question is declared "invalid" and, as a result, the declaration produces general legal effects throughout Mexico, as happens in the United States today.

To underline the importance of this change it may be useful to point out that since its inception, when the Writ of Amparo was created pursuant to the Constitutive Act of the Federation in 1824, the legal effects of the final decision in this kind of federal suit have always been limited to protect only the aggrieved individual who filed the Amparo action. This has been a most distinct feature in Amparo proceedings, known as the "Otero Formulation" in Mexico's constitutional law doctrine. The exclusion of electoral matters from the scope of these actions had been advanced, rightly so, as the strongest criticism to this change. There is no valid legal reason for the exclusion of this important and pivotal area from the Supreme Court's original jurisdiction, especially now that President Zedillo's administration is intent on stimulating political reform in his country. Accordingly, this constitutional change seems to be legally short and politically incongruent.

2. The Council of the Federal Judiciary

From an administrative viewpoint, the creation of this new judicial organ has been uniformly recognized as an adequate and necessary development. To relieve Supreme Court Justices of their burdensome and rather antiquated administrative duties regarding lower courts may be the best change from a managerial standpoint. Abolishing these duties

REFORMAS 1982-1988, at 300-01 (S.A. Porrúa ed., 1st ed. 1987) (providing the rationale and content of this amendment).

represents a big plus when compared with the performance of those demanding intellectual tasks Justices are to render during their tenure. Comparatively, the suppression of these duties may be equated, to an extent, with the elimination of circuit riding by United States Supreme Court Justices early last century.

The creation of the Council of the Federal Judiciary may also be construed as a response to those who favor specialization and efficiency as essential components of the judicial sector. Mexican specialists seemed to be pleased that it was the General Council of the Judicial Power of Spain—a country whose legal influence in Mexico and throughout Latin America is quite evident—that was utilized as the model for their country's new judicial organ.

From a domestic angle, it was intriguing to learn that the Council of the Judiciary had already been transplanted to Mexico, from Europe, in 1990. The northern states of Sinaloa and Coahuila share the merit of having been the pioneers in introducing this addition to the Mexican judicial system. It is to be expected that similar Councils will appear in other Mexican states in the future. Studying the structure, composition and functions of Councils of the Judiciary that currently exist in Europe, one is led to consider whether they may offer any interesting or useful insights into our United States Supreme Court, from administrative and academic viewpoints.

3. An Overhaul of Mexico's System of Justice

The perception that currently prevails in the United States and elsewhere, that Mexico has an antiquated, inefficient and corrupt system of justice, has been an old and permanent fixture attached to that country's legal edifice. The changes introduced to the federal judicial system by President Zedillo's constitutional amendment signal the determination to launch a radical transformation of the law enforcement bodies, and the system of imparting justice in that nation. This amendment has been identified by Mexican specialists as only the beginning. It is a first step in a long and arduous journey that is expected to move forward in order to bring transparency to secret chambers in judicial courts and to open and clean up dark rooms in police and military departments throughout the vast and varied geography of that country.

In his recent "National Development Plan, 1995-2000," President Zedillo asserted that "a new phase of comprehensive renewal in favor of a State of law and order, as demanded by the Mexican society, was

initiated with the constitutional amendments of December of 1994."²²³ In this Plan, the President of Mexico spells out in detail the objectives, strategies and actions that have already been put in place to transform his country into a nation that truly abides by its Constitution and respects its laws (*Por un Estado de Derecho y un País de Leyes*).²²⁴ The training and professionalization of federal judges and magistrates, and the establishment of the judicial career, are steps directed towards this goal.

B. FROM THEIR POLITICAL DIMENSION

These constitutional amendments go beyond their purely judicial nature. They must be placed within a larger context: the political equilibrium that must exist in a federal government between the executive, legislative and judicial powers. From this angle, one may construe these changes as the first constitutional initiative in the political history of that nation expressly drafted to provide its Supreme Court of Justice with a new and more vigorous official profile. This constitutional transformation was designed to produce a "political rebirth" of Mexico's highest tribunal.

Parallel to the political ideas advanced in the United States in the early era of the Supreme Court, suggesting that the Judicial Power was not a real power,²²⁵ similar arguments were made in Mexico, most notably by Emilio Rabasa early this century.²²⁶ Considering the asymmetrical accumulation of political power gathered in the hands of the Federal Executive *vis-a-vis* the other two powers—a political anomaly which has resulted in a *de facto* Super-Presidency in Mexico—political and

223. See PLAN NACIONAL DE DESARROLLO, *supra* note 91, at 20.

224. See *id.* at 17-28.

225. THE FEDERALIST No. 18 (Alexander Hamilton); see ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR POLITICS (1962).

226. See generally EMLIO RABASA, LA CONSTITUCION Y LA DICTADURA (1912). Rabasa states:

The judicial department will never be a power because the administration of justice is never dependant on the will of the nation; because in its resolutions neither the desire nor the public good are taken into account, and the individual right is superior to the common interest, since the courts do not resolve what they want in the name of the people, but what they should and must do in the name of the law; and because a free will, which is the essence of the organ power, would be the degeneration and corruption of the organ of justice.

Id. at 256.

legal observers may reasonably wonder whether a federal form of republican government exists in Mexico, as it is formally stated in its Constitution.²²⁷

As a consequence of the recent electoral reform, the Federal Congress is beginning to show some signs of political autonomy and independence, as a branch separate and different from the Executive. In essence, this has been accomplished by the political representation recently acquired by members of political parties different than the official PRI as federal representatives in the Chamber of Deputies (*Cámara de Diputados*). Legislators from the PAN and the PRD are beginning to form coalitions in this Chamber to counterbalance the political control the PRI has exercised for decades. Accordingly, the perception of a stronger legislative power has begun to emerge over the last few years. However, nothing similar has occurred in relation with the Federal Judicial Power. Consequently, whereas the Legislative branch is already in the process of gaining political strength, the Judicial Power remains unchanged.

Therefore, in consonance with his stated policy of introducing a new type of federalism, President Zedillo is also engaged in a determined effort to balance the three federal powers, attempting to place them at the same political level, at a plane of coordination, as mandated by the Constitution. This delicate political exercise has resulted in the implementation of two coordinated strategies: first, in the lowering of the asymmetrical political power of the federal executive. In this respect, President Zedillo has coined the term "*Presidencia acotada*," (i.e., a clearly delimited Presidency). This would mean that in Mexico today the Presidency no longer has, nor does it confer, an absolute political power. Rather, the Presidency now has clearly defined political boundaries. Second, the changes have elevated the political standing of the Supreme Court of Justice to the epitome of the federal judicial power. This latter strategy played a pivotal part in President Zedillo's decision to amend the composition and functions of this highest tribunal. Through the amendment, he intended to enhance the political status and legal role of that court.²²⁸ Now that the amendments have been enacted, the next

227. See CONST. art. 49.

228. See *Iniciativa*, *supra* note 3, at 3. This intention becomes evident from the text of President Zedillo's legislative initiative:

[A] Supreme Court of Justice [that is] free, autonomous, strengthened and of excellence, is essential for the full validity of the Constitution, and for the State of law and order that said Constitution consecrates. *The popular will has*

question is whether they will accomplish this goal and, in reality, change the course of the Supreme Court.

deposited in the Supreme Court the fundamental function of maintaining the balance between the Powers of the Union, resolving the controversies that may arise between the Executive and the Legislative. Furthermore, in the Supreme Court resides the mandate of protecting the union of the Republic, resolving the controversies between States, municipalities, the Federal District and the Federation. In the Supreme Court resides, also, the mandate to guarantee individuals that any act of the authority complies strictly to the order established by the Constitution. Consequently, a régime of full respect to a State of law and order, and to a just and efficient system of imparting justice and public security, requires a Judicial Power more independent and more powerful.

Id.