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Democracy's Vanguard: The Mexican Supreme Court Post-*Presidencialismo*

According to Mexican Supreme Court Minister José de Jesús Gudiño Pelayo, the Mexican Constitution bestows upon the judiciary the “great and noble responsibility of making [the Constitution] alive.”¹ While many international jurists would take such a role for granted, for Mexico, Justice Gudiño Pelayo's words bear a special significance. Under the seventy-year rule of the *Partido Revolucionario Institucional* (PRI), Mexico's judiciary exercised little influence on Mexican politics, as the overwhelming majority of political power was vested in the President himself. The Mexican Constitution of 1917 and the rights and guarantees that it embodied, moreover, served as little more than an historical document and a tool for PRI exploitation, as its liberal provisions underwent hundreds of amendments by PRI governments and it acted only as a democratic façade for the PRI's centralized, authoritarian system.

Beginning in 1994, however, the historically servile role of the Mexican judiciary began to change. With President Ernesto Zedillo's revolutionary constitutional reforms, the Mexican Supreme Court began to assert its agency to provide a much-needed counterbalance (also known as horizontal accountability) to presidential hegemony. Considering this background, how did the newly-empowered Supreme Court encourage the rise of democracy during and after the fall of the PRI? Although its contributions were many, the Court promoted the rise of Mexican democracy in two principal ways: first, by

¹ José de Jesús Gudiño Pelayo, “The Supreme Court's Participation in the Construction of the Mexican Democratic Model,” *Mexican Law Review*, no. 4 (July-December 2005), <http://info8.juridicas.unam.mx/cont/4/arc/arc5.htm>.

-serving as a counterbalance to the Mexican presidency and second, by transforming itself into a “constitutional court” and strengthening the role of the Mexican Constitution.

In order to analyze the role of the Supreme Court in encouraging the growth of Mexican democracy, the paper will be organized as follows: The first section will provide a structural description of the Mexican Supreme Court as well as an historical background of its role under the PRI and the terms of President Zedillo’s 1994 reforms. The second section will focus on the role of the Supreme Court in ensuring a democratic balance of power, specifically as a counterbalance to the Mexican presidency. The third section will explore modern Mexican constitutional law and its connection to democracy. Included in this section will be a discussion on the Supreme Court’s transformation into a “constitutional” court as well as its re-empowerment and re-legitimization of the 1917 Mexican Constitution. Finally, the fourth section will provide specific examples of recent Supreme Court cases to illustrate the paper’s central arguments. Following the paper, a brief Literature Review will analyze the sources used in this study, noting their contributions, limitations, and role in the larger study of the Mexican Supreme Court and democratization.

The Court under the PRI and the 1994 *Reforma*: A Historical Perspective.

Before discussing the Supreme Court’s recent role in the democratization of Mexico, it is necessary to describe briefly the modern Court’s historical and legal influences as well as the constitutional reforms that empowered it. Legally, the Court derives its power from the 1917 Mexican Constitution, which at least nominally divides federal power among the legislative, executive, and judicial branches.² Overseeing the judicial branch is the Supreme Court, or the *Suprema Corte de Justicia de la Nación*, which is comprised of a Chief Justice,

² Mexican Constitution of 1917 (hereinafter “Mexican Constitution”), Art. 19.

or *Presidente de la Suprema Corte*, and ten associate justices, or *ministros*.³ Depending on the case's subject matter, the Court may sit *en banc* (*sesionado en pleno*) with all ministers present or in one of two chambers (*salas*) with five associate justices in each.⁴

Theoretically, the Mexican judiciary should function within a federal system of checks and balances. According to Article 49 of the current Constitution, “[t]wo or more of these [federal] powers shall never be united in one single person or corporation, nor shall the legislative power be vested in one individual except in the case of extraordinary powers granted to the Executive.”⁵ In other words, the Constitution not only empowers each branch of the federal government, but it also dictates that this authority be shared amongst the branches, thereby establishing a system of checks and balances.

The reality of the Mexican political structure under the PRI did not reflect these constitutional provisions, however, as a series of authoritarian presidents coupled with Mexico's civil legal structure greatly limited the Supreme Court's power. Behind the Constitution's democratic façade, PRI presidents alone enjoyed the majority of legislative, judicial, and executive power. Under this system of *presidencialismo*, the Supreme Court found itself overburdened with insignificant, technical cases and virtually powerless at the hands of an authoritarian president.⁶

Mexico's historical legacies and civil law framework only operated to reinforce *presidencialismo*. Mexico inherited from Spain the practice of centralizing power in an authoritarian executive. The *audiencia*, for example, represented the unification of

³ Ibid., Art. 94.

⁴ Ibid. See also Stephen Zamora et al., *Mexican Law* (New York: Oxford University Press, 2004), 189-90.

⁵ Mexican Constitution, Art. 49.

⁶ Zamora, *Mexican Law*, 188.

executive, judicial, and legislative powers into one political body.⁷ Legally, unlike common law jurisdictions which permit judicial legislation through the use of *stare decisis*, or binding decisions, Mexico's legal system reflects a traditional civilian mistrust of the judiciary.⁸ As a result, Mexican civil law favors written, codified law to judicial authority and generally encourages passive judicial application of legislated codes.⁹

Although the notion of binding judicial precedent is present in the Mexican legal system, it is much more difficult to achieve than in a common law jurisdiction, which requires only one decision to become binding on third parties. Under the *Amparo* Law, there have historically been only two ways in which the Supreme Court could issue binding precedent, or *jurisprudencia obligatoria*. First, if on the same question a chamber issued five uninterrupted decisions by a majority of at least four votes, the decision would become binding. Second, if sitting in a plenary session the Court resolved discrepancies in the decisions of two chambers with the support of at least fourteen of the twenty-one votes, its decision would result in *jurisprudencia obligatoria*.¹⁰ Therefore, although it was theoretically a possible option, judicial legislation was virtually nonexistent in Mexico, especially when compared to its common law neighbor, the United States. When coupled with the centralist, authoritarian nature of *presidencialismo*, Mexico's civil law framework provided little judicial independence for the Supreme Court. As a matter of fact, many

⁷ Ibid., 187.

⁸ Rudolf B. Schlesinger et al., *Comparative Law: Cases-Text-Materials*, 6th ed. (New York: Foundation Press, 1998), 270.

⁹ Ibid.; Zamora, *Mexican Law*, 186.

¹⁰ Schlesinger et al., *Comparative Law*, 668.; Roderic Ai Camp, *Politics in Mexico: The Democratic Consolidation*, 5th ed. (New York: Oxford University Press, 2007), 190.

Mexicans considered the PRI-era Supreme Court to be “inefficient, ineffectual, or even corrupt.”¹¹

The Mexican political and economic disasters of the late twentieth century, however, necessitated a new role for the judiciary. Beginning in 1968 with the government massacre of student protestors at Tlatelolco, Mexicans began to experience a growing disenchantment with the PRI and its authoritarian policies.¹² Gross government overspending and the subsequent economic crisis of 1982 further undermined PRI legitimacy, along with the government’s failed response to the 1985 Mexico City earthquake and the suspected electoral fraud of the 1988 presidential election.¹³ Watching their party fall into a tailspin, PRI presidents initiated a series of electoral reforms to offer token representation to opposition parties in an attempt to regain political legitimacy.¹⁴ It became clear that PRI hegemony was doomed to failure, however, and the weakening of the executive created a tremendous political void. Simultaneously, the Mexican populace became increasingly insecure as the decentralization of political control resulted in a surge of violence and police corruption throughout the country.¹⁵ As the ineffectiveness of the judiciary became “increasingly intolerable” under these circumstances, Mexican intellectuals, judges, lawyers, and politicians clamored for judicial reform.¹⁶

The troubled Mexican judiciary experienced a dramatic transformation during the *sexenio* of President Ernesto Zedillo. In 1994, President Zedillo instituted sweeping

¹¹ Zamora, *Mexican Law*, 187.

¹² Colin M. MacLachlan and William H. Beezley, *El Gran Pueblo: A History of Greater Mexico*, 3rd ed. (Upper Saddle River, NJ: Prentice Hall, 2004), 401-03.

¹³ *Ibid.*, 436-454.

¹⁴ *Ibid.*, 449-50.

¹⁵ *Ibid.* See also Diane E. Davis, “Law Enforcement in Mexico City: Not Yet Under Control,” *NACIA Report on the Americas* 37, no. 2 (September/October 2003): 17-24.

¹⁶ Zamora, *Mexican Law*, 187.

constitutional judicial reforms, also known as the *Reforma Judicial*, which restructured the Court and expanded its jurisdiction. Structurally, among other things, an amended Article 94 reduced the number of justices from twenty-one to the current eleven, and reorganized the Court's chamber structure.¹⁷ While the Court previously operated under a four-chamber structure (hearing administrative, labor, civil, and criminal cases in separate chambers), only two chambers exist in the modern Court: one with jurisdiction over both civil and criminal issues, while the other oversees administrative and labor matters.¹⁸

Most notably for Mexican democracy, however, the reforms provided two mechanisms for judicial review of executive actions. First, it revived and strengthened the role of “constitutional controversies,” (*controversias constitucionales*) which would allow the Court to hear and resolve constitutional conflicts among different levels and branches of government.¹⁹ Second, it introduced “actions of unconstitutionality” (*acciones de inconstitucionalidad*) to provide a means by which members of the Senate or Chamber of Deputies may challenge a federal, non-electoral law.²⁰ The political implications of such reforms were tremendous, as the Court now possessed the ability to restrain the powers of coordinate branches of government, reassert the legitimacy of the Constitution, and protect the constitutional rights of common Mexicans more effectively. As discussed in the sections

¹⁷ Ana Torriente, “Study of Mexican Supreme Court Decisions Concerning the Rights of State Employees to Organize in the States of Jalisco and Oaxaca: Final Report,” U.S. Department of Labor, Bureau of International Labor Affairs, <http://www.dol.gov/ilab/media/reports/nao/TorrienteStudy.htm#IIC>.

¹⁸ Ibid.

¹⁹ Beatriz Magaloni, “Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico,” in *Democratic Accountability in Latin America*, ed. Scott Mainwaring and Christopher Welna (New York: Oxford University Press, 2003), 281.

²⁰ Ibid. Constitutional actions (in the case of federal, non-electoral laws) require the support of at least one third of the members of either the Senate or the Chamber of Deputies. There are separate requirements for challenges of state laws and federal electoral laws, both of which are beyond the scope of this paper.

that follow, this new clout would propel the Supreme Court to the forefront of Mexico's democratic transition.

The Court and a Democratic Balance of Power

According to Guillermo O'Donnell, "horizontal accountability," or the ability of state agents to hold other state agents politically accountable, is a central tenet of democracy.²¹ With President Zedillo's 1994 *Reforma Judicial*, the Mexican Supreme Court transformed from a passive body into a veritable state actor with the ability to challenge and restrict presidential hegemony. In this way, the Court emerged from the presidentialist system to play an instrumental role in Mexico's democratization by serving as a much-needed counterbalance to executive power.

O'Donnell's theory of horizontal accountability revolutionized the way in which social scientists viewed (and continue to view) the notion of democracy, as it became increasingly evident that successful democracies required the presence of *both* vertical and horizontal checks on each branch of state power.²² As he describes it, political accountability exists "not only vertically, making elected officials answerable to the ballot box, but also horizontally, across a network of relatively autonomous powers (i.e., other

²¹ Charles D. Kenney, "Horizontal Accountability: Concepts and Conflicts," in *Democratic Accountability in Latin America*, ed. Scott Mainwaring and Christopher Welna (New York: Oxford University Press, 2003), 56-57.

²² O'Donnell's approach is limited as it focuses solely on political accountability. However, a growing amount of literature focuses on external pressures on the government, such as those imposed by the media and society. For more information on these "extra-political" forms of accountability, see Enrique Peruzzotti and Catalina Smulovitz, "Held to Account: Experiences of Social Accountability in Latin America," *Journal of Human Development* 3, no. 2 (2002): 209-30 (analysis of social accountability); and Sallie Hughes, *Newsrooms in Conflict: Journalism and the Democratization of Mexico* (Pittsburgh: University of Pittsburgh Press, 2006) (media accountability).

institutions) that can call into question, and eventually punish, improper ways of discharging the responsibilities of a given office.”²³

In other words, according to O’Donnell, state agencies hold each other accountable through various methods of questioning, and if necessary, punishment. In the case of the judiciary, the primary method of holding the executive accountable lies in the Supreme Court’s independent ability to review presidential policies and, if necessary, declare them as unconstitutional.²⁴ Therefore, by measuring changes in the Supreme Court’s ability to assert its constitutional authority vis-à-vis the president, it will be possible to determine whether horizontal accountability (and hence democracy) has been strengthened.

Before the 1994 judicial reforms, the Mexican Supreme Court exerted limited ability to challenge or “punish” extra-constitutional presidential policy. While Article 49 of the Constitution of 1917 purportedly established separation of powers, the executive largely ignored it. After all, the authoritarian president was, in essence, “above the constitution,” as the powerless Supreme Court lacked the mechanisms to challenge his hegemony.²⁵

Beatriz Magaloni attributes this lack of horizontal accountability to three principal factors: First, she argues, the Mexican constitution was “flexible in practice.”²⁶ Instead of limiting the president’s power, the constitution served as a legitimizing device for authoritarianism, as the president enjoyed the ability to shape its provisions. As a matter of fact, during the seventy-year rule of the PRI, Mexican presidents amended the constitution hundreds of times (some legal scholars count over 400 amendments) to serve their political

²³ Guillermo O’Donnell, “Delegative Democracy,” in *Counterpoints: Selected Essays on Authoritarianism and Democratization* (Notre Dame: University of Notre Dame Press, 1999), 165.

²⁴ Ibid.

²⁵ Magaloni, “Authoritarianism,” 281.

²⁶ Ibid.

needs.²⁷ Second, most justices' tenures were extremely short, allowing each president to select his own Court.²⁸ Finally, and perhaps most importantly for this paper, the Supreme Court's jurisdictional power in interpreting the constitution was severely limited, as cases with political content (such as electoral issues and constitutional controversies among different government actors) were off limits to the judiciary.²⁹ Obviously, under such a framework it was extremely difficult—if not impossible—for the Supreme Court to hold the executive politically accountable.

As stated in the first section, the 1994 *Reforma* drastically changed the Supreme Court's potential influence vis-à-vis the executive, especially in terms of the jurisdictional limitation that Magaloni describes. The revamping of constitutional controversies and introduction of actions of unconstitutionality provided a means by which the Court could actively challenge the presidency and restrain its power, thus contributing to horizontal accountability, and hence democracy. At least theoretically, it became clear that the Supreme Court enjoyed what Magaloni terms "a new constitutional role" in Mexico's democratic transition.³⁰

Considering the lack of constitutionalism that historically plagued Mexican politics, the central question becomes whether the Supreme Court actually adopted this democratic "watchdog" role encouraged by these new channels of judicial review. According to a study by Julio Ríos-Figueroa, the Supreme Court has indeed taken on a more active role in Mexican politics, as the numbers of Court decisions on constitutional controversies and

²⁷ Zamora et al., *Mexican Law*, 79. For the study that calculated over 400 amendments to the Mexican Constitution since the PRI's rule, see S. López Ayllón and H. Fix Fierro, "'Tan cerca, tan lejos': El Estado de derecho en México," 97 *Boletín mexicano de derecho comparado* (2000).

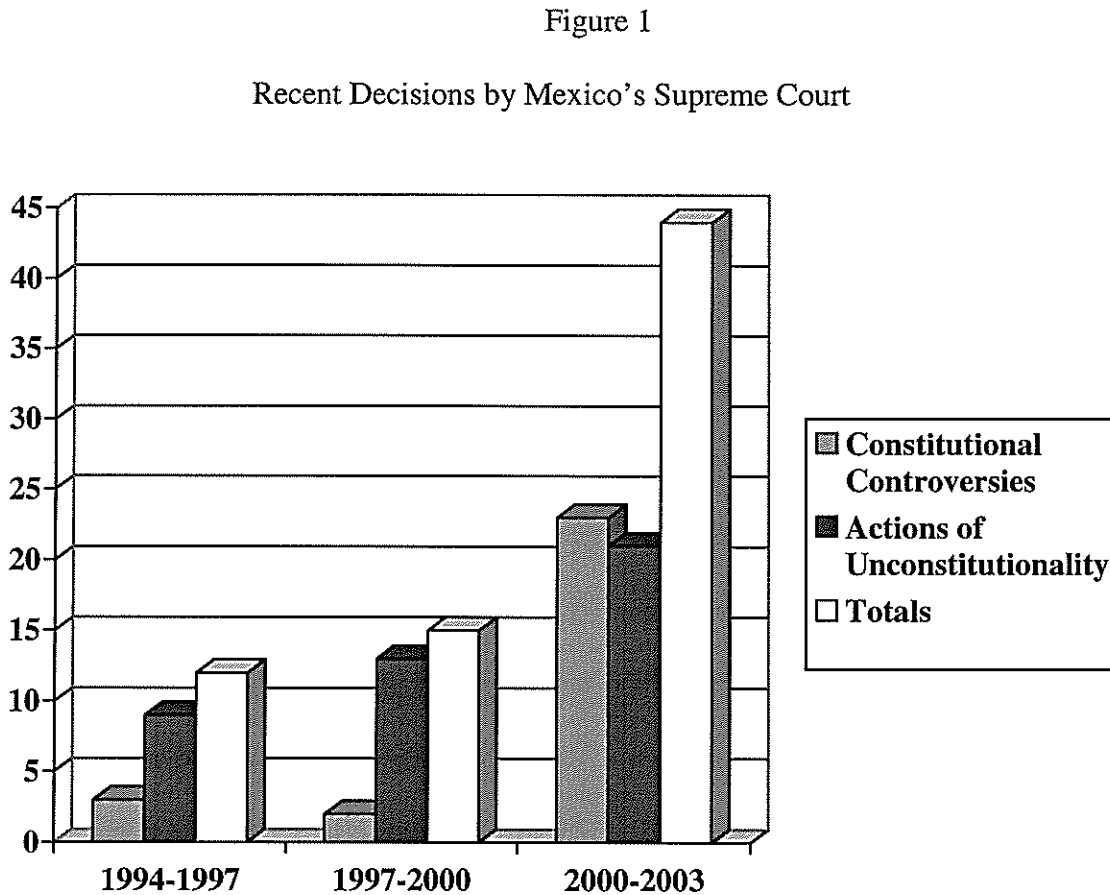
²⁸ Magaloni, "Authoritarianism," 281.

²⁹ *Ibid.*

³⁰ *Ibid.*

actions of unconstitutionality have both risen during the period between 1994 and 2003.

This data is illustrated in Figure 1 below:

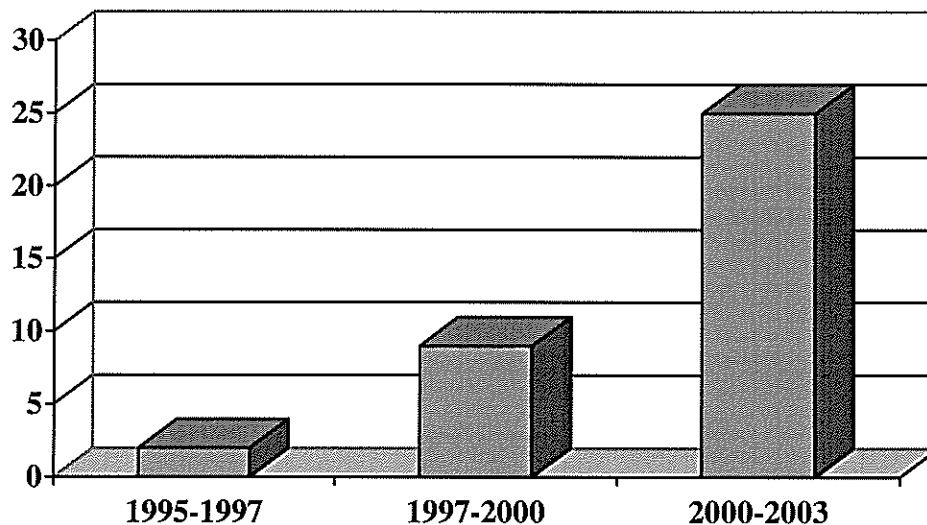


Source: Julio Ríos-Figueroa, "A Minimum Condition for the Judiciary to Become an Effective Power, the Mexican Supreme Court, 1994-2002," paper presented at the Midwest Political Science Association meeting, Chicago, Illinois, April 15-18, 2004. Data reproduced in Camp, *Politics*, 191.

As the data in Figure 1 demonstrate, within the first decade of the *Reforma's* existence alone judicial activism vis-à-vis coordinate branches of government (i.e., total constitutional actions) increased nearly fourfold. Not only are the sheer numbers of constitutional cases on the rise, but there are also a growing number of rulings against the government in these cases, as demonstrated by Figure 2 below:

Figure 2

Percentage of Pro-Plaintiff Rulings by the Mexican Supreme Court in Constitutional Cases



Source: Ríos-Figueroa, "A Minimum Condition." Data reproduced in Camp, *Politics*, 191.

Both figures suggest that the *Reforma* has empowered the Court to contribute to Mexican democratization in the form of horizontal accountability. The early surge of constitutional cases in the past decade indicates that the Court is no longer confined to its PRI-era role as an arbiter of insignificant issues. Rather, by confronting a growing number of complex constitutional issues the Court is now emerging as an influential political actor. Moreover, the increasingly plaintiff-friendly nature of the Court is perhaps the most telling indicator of horizontal accountability, as it demonstrates a politically independent body willing (and able) to punish the misuse of power by way of judicial review.

The "Great and Noble Responsibility" Revived

The rise of constitutional actions and actions of unconstitutionality is also indicative of an increased adherence to the Mexican Constitution, another central contribution of the Supreme Court to democratization. Empowered by these new methods for judicial review, the Court emerged from the *Reforma* as “the sole interpreter of the Mexican Constitution,” wielding great influence not only in providing a counterbalance to presidential and legislative power as described above, but also by serving as a true “constitutional court” and narrowing the historical gap between constitutional provisions and actual practice.³¹ By providing a uniform interpretation of the Constitution, the Court edified the rule of law in Mexico, thus contributing greatly to the process of democratization.

In his *Principles of Constitutional Design*, political scientist Donald S. Lutz addresses the necessary role that constitutional adherence plays in achieving democratization. Among his criteria for what he terms a functional constitutional democracy is a constitution that is “followed rather than ignored” and is “based on and supports the rule of law.”³² Applying these factors to the experiences of democracies throughout the world, Lutz observes that constitutional democracies generally experience a lag of one century between adopting a written constitution and actually adhering to its terms.³³ This phenomenon is illustrated by Figure 3 below. As Lutz theorizes,

[i]t is quite possible that once a country writes down a set of rules, even though they are merely a window dressing, these rules over time create among the people an expectation of reasonable compliance that amounts to a self-fulfilling prophecy. In day-to-day operations the leaders of nondemocratic countries often use most of their written constitution as a convenient means for coordinating behavior and minimizing

³¹ Stephen Zamora and José Ramón Cossío, “Mexican Constitutionalism after *Presidencialismo*,” *International Journal of Comparative Law* 4, no. 2 (April 2006), <http://law.lexisnexis.com/>.

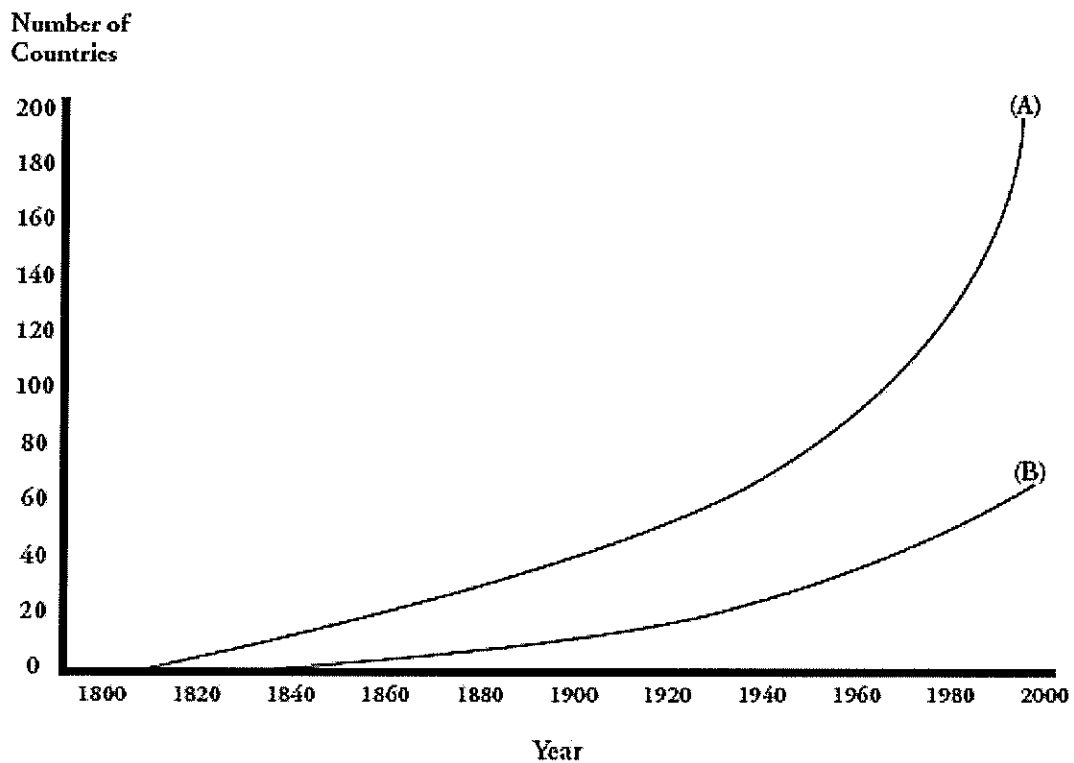
³² Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), 5.

³³ *Ibid.*

inefficiencies. Over time it can be quite natural for people to ask why 90 percent of a constitution is followed and not the other 10 percent.³⁴

Figure 3

Approximate number of countries with a written constitution (A) compared with the approximate number of countries having met the requirements to be a constitutional republic (B)



Source: Reprinted from Lutz, *Constitutional Design*, 4.

Lutz' observations appear to provide an accurate explanation for the changing role of Mexico's constitution. In its original form, the Constitution of 1917 was as revolutionary as the struggles that produced it. Heavily inspired by the ideals of the Revolution and Juárez'

³⁴ Ibid.

liberal legacies, the new constitution's provisions reflected Mexican "nationalism, secularism, anticlericalism, and social consciousness."³⁵ The revolutionary spirit of the 1917 Constitution is probably best reflected by Articles 3, 27, and 123.³⁶ Article 3 secularized public education and made it compulsory and free of charge.³⁷ Article 27 instituted vast land reforms, establishing the State as the source of all private property with the power to limit or redistribute it as it saw necessary and placed control over natural resources in the hands of the State as well.³⁸ Finally, Article 123 contained provisions to protect laborers, such as regulations controlling wages and working conditions.³⁹

Under the PRI, however, many of these progressive constitutional guarantees were not realized and the constitution served only as a mere democratic façade. For example, behind the balance of power supposedly created by Article 49 was a political system dominated by an authoritarian president, as discussed above. Although Articles 35 and 36 created the right and obligation for Mexicans to vote, the "elections" that took place under the PRI were frequently tainted with fraud and corruption.⁴⁰ These instances provide only a few examples of the great disparity that historically existed between written Mexican law and the law as applied.

When considering Mexico's legal framework, this discrepancy may seem unexpected at first glance. After all, like the US Constitution after which it was modeled, the 1917 Mexican Constitution contains a supremacy clause declaring it to be the supreme

³⁵ James W. Wilkie and Albert L. Michaels, eds., *Revolution in Mexico: Years of Upheaval, 1910-1940* (New York: Albert P. Knopf, 1969), 113, quoted in MacLachlan and Beezley, *Gran Pueblo*, 263.

³⁶ MacLachlan and Beezley, *Gran Pueblo*, 263.

³⁷ Mexican Constitution, Art. 3.

³⁸ *Ibid.*, Art. 27.

³⁹ *Ibid.*, Art. 123.

⁴⁰ *Ibid.*, Arts. 35-36; Camp, *Politics*, 64.

law of the land.⁴¹ As a result, the Constitution enjoys the top position in Mexico's formal legal hierarchy and judges are required by law to consider its provisions first when ruling on any issue.⁴²

Why, then, did the Constitution play such a weak role under the PRI? As Steven Zamora et al. argue in *Mexican Law*, while the 1917 Constitution's role has no doubt been important for the Mexican people, it has served more as a symbolic rather than a "functional" document. They describe this distinction by comparing the Mexican Constitution, which they term "nominal," to that of the United States, called "normative."⁴³ The US Constitution, they argue, is normative as it creates certain political and legal values that the US populace expects their government to follow.⁴⁴ On the other hand, the Mexican Constitution "has been recently characterized by Mexican constitutional scholars as a project to be accomplished, a statement of revolutionary ideals that is nominal in that there is no intended immediate congruency between its stated aspiration and reality."⁴⁵ As the authors observe, a PRI president generally would institute sweeping constitutional reforms at the inception of his *sexenio* (such as Zedillo's judicial reforms, ironically) in order to "demonstrate the genuineness of his commitment to address the Mexican crisis of the day—be it economic chaos, judicial corruption, electoral fraud, or whatever—by incorporating his planned reforms into the society's document-of-documents, the Constitution itself."⁴⁶ The Constitution, then, became a tool for authoritarian legitimization.

⁴¹ Mexican Constitution, Art. 133.

⁴² Zamora et al., *Mexican Law*, 94-95.

⁴³ Ibid., 79.

⁴⁴ Ibid.

⁴⁵ James F. Smith, "Confronting Differences in the United States and Mexican Legal Systems in the Era of NAFTA," *United States-Mexico Law Journal* 1 (1993): 94, quoted in Ibid.

⁴⁶ Zamora et al., *Mexican Law*, 79.

I would add to the authors' argument one more point. Unlike its counterpart in the United States, the Mexican Supreme Court as the intended interpreter of the Constitution emerged to play a secondary or even tertiary role to the executive. The presidentialist government that arose under the PRI not only represented a constitutional violation in itself—as explored in the previous section—but it also allowed the president to amend and/or violate the Constitution with few challenges from the powerless Court or the “*levantados*” in the legislature. Therefore, from an early point in its history the Mexican Supreme Court lost its function to serve as the sole interpreter of the Constitution and to shape a more uniform, permanent constitutional policy. Instead, as the “supreme law” became dependent on the ideology of the particular president in power, the Constitution lacked a sense of permanency and was generally more difficult to follow.

After seventy years of PRI rule, however, Mexico slowly began to enter a new constitutional era in apparent accordance with Lutz' model. According to Lutz, Mexico has recently shifted from an authoritarian regime into the group of countries he terms “new or renewed constitutional republics.”⁴⁷ This label indicates that although some scholars perceive that Mexico continues to struggle in adhering to its constitution, among other things, most view it as a true constitutional democracy.⁴⁸ Moreover, Lutz predicts that seven

⁴⁷ Lutz, *Constitutional Design*, 6.

⁴⁸ *Ibid.*

of the twenty-one countries in this group will have become “major constitutional republics” by 2016.⁴⁹ Mexico will likely be one of these.

The Supreme Court’s recent transformation into a constitutional court explains a large part of the government’s greater adherence to the Constitution. While some would hesitate to label the Supreme Court as a “constitutional” one as it does not monopolize constitutional jurisdiction as do its counterparts in the European legal traditions, Supreme Court Minister José de Jesús Gudiño Pelayo argues that European constitutional courts should not serve as the sole model.⁵⁰ Legal traditions, he observes, are as diverse as the cultures that produce them, and legal paradigms must be broad enough to account for these differences.⁵¹ In fact, he observes that not even the United States Supreme Court fits this European model as it does not exercise exclusive jurisdiction over constitutional matters, yet few would contest that it is a constitutional court.⁵²

Realizing the deficiency in the traditional notions of constitutional courts, Minister Gudiño Pelayo proposes a more inclusive definition. Rather than defining constitutional courts by their monopolization of constitutional jurisdiction, he argues that the central factor should be whether the court is the “maximum and terminal authority” of constitutional decision-making in its country’s legal system.⁵³ Such a definition would not only include a more diverse body of courts, such as those of the United States and recently Mexico, but it would also better capture the essence of a constitutional court; that is, while it may not have exclusive jurisdiction over all constitutional matters (which often results, as seen in the

⁴⁹ Ibid., 6-7.

⁵⁰ Gudiño Pelayo, *Supreme Court’s Participation*, n.p.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

European cases, in tremendous court overload), it serves as the ultimate and final authority on them.

As a fledgling constitutional court, the Supreme Court has fostered democratization in two ways, according to Minister Gudiño Pelayo. First, the Court serves as a “valve for political depressurizing” by hearing constitutional controversies and arbitrating inter-governmental conflict.⁵⁴ Second, by resolving these conflicts it clarifies potentially grey areas of the law, providing a uniform interpretation of the Constitution.⁵⁵ As submitted earlier, under the volatile, executive-driven constitutional “interpretation” of the PRI, the Constitution would have been difficult to follow. Now that the Court is able to redefine the role of the Constitution, it is able to provide “future generations numerous precedents and theses that interpret and provide certainty about the contents of our Constitution, the scope of the human rights [protected] by it and the lines between powers and levels of governments that must be respected.”⁵⁶ Democracy expands through the Court’s ability to provide the final interpretation of constitutional matters and construct judicial precedent. A more uniform interpretation of the Constitution contributes to the rule of law and facilitates law enforcement.

A Constitutional Controversy: Landmark Decisions from an Empowered Court

While theoretical discussions are helpful in explaining the Supreme Court’s empowered role, specific examples of rulings best demonstrate it. As stated earlier, one of the principal results of the *Reforma* was a strengthened Court with the ability to tackle

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

politically-charged issues. Often publicly controversial, these cases provided the Court with an opportunity to emerge as a central actor in Mexico's democratic transition by holding coordinate branches of government politically accountable and resolving inter-governmental conflicts. The following cases provide a few examples of the Court's newly-asserted democratic role:

In 1998, the Court heard the *amparo* case of an appellate judge (*magistrado*) from the State Supreme Appellate Court of Michoacán who was removed from his post by state political forces. The Court ordered the reinstatement of the judge, holding that his removal violated Article 116, Section III of the Constitution, which guaranteed judicial independence.⁵⁷ As legal scholar Stephen Zamora and Supreme Court Minister Jose Ramón Cossío observe, this decision “substantially bolstered the importance of judicial independence in achieving a consistent application of the rule of law in Mexico.”⁵⁸

The Court placed an important restriction on legislative and executive power in 1999 when it held that constitutional amendments must not only follow the regulations set out by the Constitution, but also the procedural guidelines adopted by the Mexican Congress.⁵⁹ The Court held that if an individual is affected by an improperly-amended provision, he or she may utilize the *amparo* procedure to challenge the amendment as violating due process.⁶⁰ This holding constrained both the executive and the legislature, as it mandated that the legislature follow its own procedures and that the executive not overstep its constitutionally-determined boundaries by amending the Constitution.

⁵⁷ *Amparo en revisión* 2639/96.

⁵⁸ Zamora and Cossío, “Mexican Constitutionalism,” n.p.

⁵⁹ *Amparo en revisión* 1335/98

⁶⁰ Zamora and Cossío, *Mexican Constitutionalism*, n.p.

Most recently, the Supreme Court settled an extremely controversial issue when it struck certain provisions of the *Ley Federal de Radio y Televisión*—commonly known as the *Ley Televisa* or Televisa Law—as unconstitutional. Supported by both the outgoing President Fox and the Mexican Congress in 2006, the Televisa Law would have operated to strengthen Mexico’s television duopoly, Televisa and TV Azteca.⁶¹ Among great public outcry against the law, a number of Mexican senators challenged it through the action of unconstitutionality procedure.⁶² In 2007, the Court held that five of the law’s provisions were unconstitutional, as they violated Articles 1, 25, 27, and 28 of the Constitution.⁶³ This decision was truly remarkable, as the Court confronted not only the President and Congress, but also Mexico’s greatest media giants. Referring to the Supreme Court and its decision, Mexican political analyst José Antonio Crespo observed that “at least one part of the Mexican state did not submit to the interests of the broadcasters”—a truly phenomenal occurrence considering the Court’s history of passivity to the executive.⁶⁴ By upholding the provisions of the Mexican Constitution, increasing political and media accountability, and promoting market competition, the Supreme Court’s decision concerning the *Televisa Law* proved to be fundamental in the deepening of Mexican democracy.

A New Era for the Mexican Supreme Court

The process of democratization in Mexico is by no means complete, as many areas of the country continue to struggle with corruption, violence, and economic and social

⁶¹ See Alcalá, Felipe Gaytán, and Bonilla, Juliana Fregoso, “La ley Televisa de México,” *Chasqui* 94 (June 2006): 40-45.

⁶² *Ibid.*

⁶³ *Acción de inconstitucionalidad* 26/2006.

⁶⁴ José Antonio Crespo qtd. in Noel Randewich, “UPDATE 3-Mexico Supreme Court strikes blow to Televisa,” *Reuters.com News*, 5 June 2007, <http://www.reuters.com/article/governmentFilingsNews/idUSN0530586820070605?pageNumber=1>.

inequalities, especially on the local level. However, as the evidence above demonstrates, the Mexican Supreme Court has emerged as a powerful democratizing force by enforcing the Mexican Constitution, promoting a federal balance of power, and holding the Mexican executive politically accountable—all crucial facets of a successful democracy. When President Zedillo's *Reforma* took effect in January of 1995, few would have been able to fathom that the Court would one day garner enough influence to challenge the decision of the President and the legislature, as well as the interest of two of Mexico's most powerful economic actors. Cases such as that of the Televisa Law demonstrate that the Supreme Court has emerged as a powerful political actor—one that is able to hold the formerly-authoritarian president politically accountable and to serve as the final authority on constitutional issues. Although its transformation is by no means complete, the Mexican Supreme Court is no doubt on the front lines of political change, working actively to deepen Mexican democracy.

Literature Review

As the Mexican Supreme Court's emergence as a strong political actor in Mexico is a recent phenomenon, the literature on its role in the democratization of Mexico is limited. The majority of the scholarship that is available, however, is especially insightful, as much of it originates from judicial "insiders"—that is, from lawyers, legal scholars, and the Supreme Court ministers themselves. Moreover, as there is myriad scholarship on the topics of democracy and democratization in general, these works provide a helpful framework for exploring trends in Mexico's own case. As the topic of this paper lies in the intersection of law, history, and political science, the research will necessarily be highly interdisciplinary, drawing heavily from each of these fields in order to illuminate the complex nature of democracy and its manifestation in Mexico.

An understanding of Mexico's unique legal structure is crucial when undertaking such research, as it is heavily influenced by its history and Spanish civil law tradition. For researchers in the United States, *Mexican Law* by Stephen Zamora, José Ramón Cossío, Leonel Pereznieto, José Roldán-Xopa, and David Lopez is indispensable in providing this background. This comprehensive legal treatise covers the most important aspects of Mexican law, and includes topics ranging from Mexican administrative law to judicial constitutional procedure. It also provides a tremendous amount of information about the Supreme Court, including a description of its structure, a discussion of the *Reforma*, and analyses of Mexican constitutional theory and the Court's changing role vis-à-vis the executive. Moreover, the legitimacy of the work is bolstered significantly by the professional backgrounds of its authors: Stephen Zamora is a law professor at the University of Houston and is one of the most distinguished scholars on Mexican law; José

Ramón Cossio is a minister in the Supreme Court; Leonel Pereznieta and José Roldán-Xopa are both distinguished legal scholars and law professors at Mexican universities (UNAM and ITAM respectively); and David Lopez is a member of the Texas Bar. This work is especially helpful for researchers familiar with the United States' legal system, as the international team of authors frequently employ a comparative approach using US law, facilitating an understanding of the intricate Mexican system.

Stephen Zamora and José Ramón Cossio also collaborated to write a 2006 article entitled "Mexican Constitutionalism after *Presidencialismo*." While the article does examine the roles of the Mexican Congress and changes in federalism in ushering in a "new constitutional order" for Mexico, it contains an entire detailed section on the empowered Supreme Court and its contributions to constitutionalism. Most notably, the authors provide several specific examples of constitutional cases in which the Supreme Court has challenged presidential authority since 1994.

"The Supreme Court's Participation in the Construction of the Mexican Democratic Model," an article from the July-December 2005 *Mexican Law Review*, provides a similar perspective from within the Court. In this work, Supreme Court Minister José de Jesús Guidiño Pelayo defines the empowered Mexican Supreme Court as a constitutional court. He challenges the traditional notion that constitutional courts must exercise exclusive jurisdiction over constitutional matters (such as those found in most of Europe) and contends that constitutional courts should not be viewed in terms of their monopolization of constitutional cases, but rather their ability to serve as the final and ultimate voice on constitutional matters in their country. Guidiño Pelayo further argues that the Supreme Court has utilized its newfound role as a constitutional court to usher in Mexican

democracy, providing numerous recent examples of cases in which the Court has had to decide highly politicized constitutional cases. He theorizes that in regaining its position as the final interpreter of the Constitution, the Court has become a crucial actor in promoting Mexican democracy.

While indispensable to the study of the recent changes in the Mexican Supreme Court, these three works alone are limited, as they represent only legal theory. Important aspects that they inadequately or fail to address, for example, are the profound historical influences that have shaped the modern Court (such as Spain's colonial legacies or the seventy-year rule of the PRI) as well as the theories of political science that help to explain democratic theory and the power struggles that are currently taking place within the Mexican government. To achieve a complete understanding of the Supreme Court's modern role in Mexican democracy, then, it is necessary to consult works from these other fields as well.

In history, Colin M. MacLachlan and William H. Beezley's *El Gran Pueblo: A History of Greater Mexico* serves as a useful reference for a general understanding Mexican history. From the authors' discussion of the Mexican Revolution, one may better understand the historical and ideological influences on the ground-breaking provisions of the original Constitution of 1917. Moreover, the work provides historical context for Mexico's current political system, tracking the ascendancy, rule, and fall of the PRI, as well as its implications for Mexican politics.

Finally, the field of political science offers a rich body of literature that is necessary for understanding the relationship between the Mexican Supreme Court and Mexico's democratization. Like MacLachlan and Beezley's *El Gran Pueblo*, Roderic Ai Camp's

Politics in Mexico: The Democratic Consolidation provides a general overview of Mexican politics and serves as a necessary resource for understanding the political framework in which the Supreme Court has operated. Camp devotes a small section of his work specifically to the judicial branch, describing its changing role in modern Mexican politics.

Included in Camp's discussion of the Supreme Court is data from Julio Ríos-Figueroa's 2004 study, "A Minimum Condition for the Judiciary to Become an Effective Power, the Mexican Supreme Court, 1994-2002." Ríos-Figueroa's study is crucial in analyzing the Supreme Court, as it tracked the changes in various indicators over time (such as the number of constitutional cases brought before the Supreme Court and the Court's percentage of pro-plaintiff rulings) to demonstrate the Court's growing independence and activism. As with any other source, however, one must use caution when using his data. Although, Ríos-Figueroa's relies on the use of indicators to represent the Mexican Supreme Court's role in the process of democratization, there is no known method to "measure" democratization. Moreover, though understandably for the purposes of his study, Ríos-Figueroa assumes a causal relationship between the Supreme Court's actions and democratization. While one may speculate about causation, it is extremely difficult to establish with certainty.

Guillermo O'Donnell's 1999 study "Delegative Democracy" (included in *Counterpoints: Selected Essays on Authoritarianism and Democratization*) may aid in clarifying Ríos-Figueroa's issue of causation by providing a larger theoretical framework in which to analyze the data. O'Donnell's work revolutionized political scientists' notions of democracy and democratization as it introduced the concept of "horizontal accountability," or the ability for coordinate branches of government to hold each other in check. O'Donnell

argues that horizontal accountability is crucial for democracy, as it operates to maintain a balance of power within government. Therefore, when studying the growing independence and activism of the Court vis-à-vis executive power, an understanding of horizontal accountability and its relationship to democracy is important.

Finally, political scientist Beatriz Magaloni applied O'Donnell's theory to the Mexican Supreme Court in her 2003 essay "Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico" (included in *Democratic Accountability in Latin America*, edited by Scott Mainwaring and Christopher Welna). She attributes the Mexico's historic lack of rule of law to an authoritarian president and weakened Supreme Court. Like Zamora, Cossio, and Guidiño Pelayo, however, Magaloni believes that a strengthened Supreme Court has contributed to Mexican democratization.

While the body of literature analyzing the empowered Mexican Supreme Court and its role in Mexican democracy may not be robust, sources from a variety of disciplines indicate that a strengthened Court has played a crucial role in Mexican democratization. Although each source is certainly with its own limitations and biases, when analyzed as a whole they present a convincing body of evidence. Moreover, as this study is interdisciplinary by nature, this diverse collection of sources provides a more comprehensive view of the issue.

References

Primary Materials

Acción de inconstitucionalidad 26/2006.

Amparos en revisión 2639/96; 1335/98.

Mexican Constitution of 1917.

Secondary Materials

Alcalá, Felipe Gaytán, and Juliana Fregoso Bonilla. 2006. *La ley Televisa de México*. *Chasqui* 94 (June): 40-45.

Camp, Roderic Ai. 2007. *Politics in Mexico: The democratic consolidation*. 5th ed. New York: Oxford University Press.

Davis, Diane E. 2003. Law enforcement in Mexico City: Not yet under control. *NACIA Report on the Americas* 37, no. 2 (September/October): 17-24.

Green, Leslie C., and Olive Patricia Dickason. 1989. *The law of nations and the New World*. Edmonton, Canada: University of Alberta Press.

Guidiño Pelayo, José de Jesús. 2005. The Supreme Court's participation in the construction of the Mexican democratic model. *Mexican Law Review*, no. 4 (July-December), <http://info8.juridicas.unam.mx/cont/4/arc/arc5.htm>.

Kenney, Charles D. 2003. Horizontal accountability: Concepts and conflicts. In *Democratic Accountability in Latin America*, ed. Scott Mainwaring and Christopher Welna, 55-77. New York: Oxford University Press.

MacLachlan, Colin M., and William H. Beezley. 2004. *El Gran Pueblo: A History of Greater Mexico*. 3rd ed. Upper Saddle River, NJ: Prentice Hall.

Magaloni, Beatriz. 2003. Authoritarianism, democracy and the Supreme Court: Horizontal exchange and the rule of law in Mexico. In *Democratic Accountability in Latin America*, ed. Scott Mainwaring and Christopher Welna, 228-266. New York: Oxford University Press.

O'Donnell, Guillermo. 1999. Delegative democracy. In *Counterpoints: Selected Essays on Authoritarianism and Democratization*, 159-173. Notre Dame: University of Notre Dame Press, 1999.

- Randewich, Noel. 2007. "UPDATE 3-Mexico Supreme Court strikes blow to Televisa," *Reuters.com News*, 5 June, <http://www.reuters.com/article/governmentFilingsNews/idUSN0530586820070605?pageNumber=1>.
- Ríos-Figueroa, Julio. 2004. A minimum condition for the judiciary to become an effective power, the Mexican Supreme Court, 1994-2002. Paper presented at the Midwest Political Science Association meeting, April 15-18, in Chicago, Illinois. Data reproduced in Camp, Roderic Ai. 2007. *Politics in Mexico: The democratic consolidation*. 5th ed. New York: Oxford University Press.
- Schlesinger, Rudolf B., Hans W. Baade, Peter E. Herzog, and Edward M. Wise. 1998. *Comparative law: Cases-text-materials*. 6th ed. New York: Foundation Press.
- Smith, James F. 1993. Confronting differences in the United States and Mexican legal systems in the era of NAFTA. *United States-Mexico Law Journal* 1 (1993): 85. Quoted in Zamora, Stephen, José Ramón Cossio, Leonel Pereznieto, José Roldán-Xopa, and David Lopez. 2004. *Mexican law*. New York: Oxford University Press.
- Torriente, Ana. Study of Mexican Supreme Court decisions concerning the rights of state employees to organize in the states of Jalisco and Oaxaca: Final report. U.S. Department of Labor, Bureau of International Labor Affairs. <http://www.dol.gov/ilab/media/reports/nao/TorrienteStudy.htm#IIC>.
- Wilkie, James W., and Albert L. Michaels, eds. 1969. *Revolution in Mexico: Years of upheaval, 1910-1940*. New York: Albert P. Knopf. Quoted in MacLachlan, Colin M., and William H. Beezley. 2004. *El Gran Pueblo: A History of Greater Mexico*. 3rd ed. Upper Saddle River, NJ: Prentice Hall.
- Zamora, Stephen, and José Ramón Cossio. 2006. Mexican constitutionalism after *presidencialismo*. *International Journal of Comparative Law* 4, no. 2 (April 2006). <http://law.lexisnexis.com/>.
- Zamora, Stephen, José Ramón Cossio, Leonel Pereznieto, José Roldán-Xopa, and David Lopez. 2004. *Mexican law*. New York: Oxford University Press.