

DEMOCRACY, JUDICIAL REFORM, THE RULE OF LAW, AND ENVIRONMENTAL JUSTICE IN MEXICO¹

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1. Some of the basic components of this work were included in a speech co-sponsored by the University of Houston Law Center and the Environmental and International Law Sections of the Houston Bar Association. It was delivered by the author as the 1997 A. L. O'Quinn Distinguished Lecturer on October 30, 1997 at the Houston Club. It was in the same capacity that the author completed the research for this article, updating it through August 1998 to cover relevant developments in Mexico on the subject. This work is also written on the occasion of the author's 30th anniversary as a lawyer and as a reflection on the experience gained in litigating public interest issues during the last eight years. A few months after the completion of this work, the Organization of American States Inter-American Commission on Human Rights issued *Reports on the Situation of Human Rights in Mexico, 1998* (OAS/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998), where a high degree of coincidence and support will be found for the information provided and for the analysis made by the author of this article.

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I. ENVIRONMENTAL JUSTICE AND THE RULE OF LAW IN MEXICO

The long and difficult negotiations leading up to the North American Free Trade Agreement (NAFTA) finally concluded in 1992,² but only after the governments of Canada, Mexico, and the United States gave sufficient assurances that they would accommodate the concerns voiced by the environmental communities of the three countries.³ They did so mostly through the adoption of a parallel 1993 Agreement on Environmental Cooperation,⁴ together with the Mexico-United States Agreement Concerning the Establishment of a Border Environmental Cooperation Commission and a North American Development Bank.⁵

During the process leading up to the above-mentioned international conventional instruments, attention was particularly centered on Mexico's poor record of compliance and enforcement of its environmental legislation.⁶ It was argued that Mexico's lack of enforcement would give it a competitive advantage over its trade partners and, simultaneously, turn the country into a pollution paradise that would attract industry from north of the border trying to escape from more stringent and costly environmental standards.⁷

2. North American Free Trade Agreement, *done* Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289 [hereinafter NAFTA].

3. See Alberto Székely, *International Environmental Law in North America: Beyond NAFTA*, in GREENING INTERNATIONAL LAW 250, 266-67 (Philippe Sands ed., 1994) (observing the passage of two 1993 NAFTA side agreements).

4. North American Agreement on Environmental Cooperation, *done* Sept. 14, 1993, Can.-Mex.-U.S., 32 I.L.M. 1480 [hereinafter Environmental Side Agreement].

5. Agreement Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank, *done* Nov. 18, 1993, Mex.-U.S., 32 I.L.M. 1545 [hereinafter Border Environment Agreement].

6. See Székely, *supra* note 3, at 259-60.

7. See *id.* at 260.

Since the three agreements have been in force,⁸ much has happened that is highly relevant to Mexico's environmental legislation, albeit indirectly. Mexico has undertaken minor reforms. Legislative changes in 1996 modestly strengthened the 1988 General Act on Ecological Equilibrium and the Protection of the Environment.⁹ The 1992 Forestry Act was also strengthened in 1997.¹⁰ In contrast, little has been done to turn the so-called Federal Environmental Prosecution Office into something more than the mere facade and simulation it has been since its creation in 1992.¹¹

By the end of 1997, political developments in the country seemed to hold the promise for a change in the basic foundations underlying the more-than-questionable record of compliance and enforcement of environmental legislation and, for that matter, of the national legislation as a whole.¹²

This is due to the fact that the problem of environmental justice in Mexico is closely linked to and the unquestionable result of numerous political realities in Mexico. The lack of environmental justice is part and parcel of the precarious situation of democracy in the country, the bitter realities of the nonempire, the ineffectiveness of the rule of law, and the extremely poor quality of administration of justice in the country.

All these issues, however, have high priority in the current national public debate, and some modest progress is

8. NAFTA was signed in 1992. See NAFTA, *supra* note 2, at 289. The Environmental Side Agreement was signed in 1993. See Environmental Side Agreement, *supra* note 4, at 1480. The Border Environment Agreement was signed in 1993. See Border Environment Agreement, *supra* note 5, at 1545.

9. See "Decreto que reforma, adiciona y deroga diversas disposiciones de la Ley General del Equilibrio Ecológico y la Protección al Ambiente," D.O., 13 de diciembre de 1996 (observing, for example, reforms to articles one, two, three, and four).

10. See "Decreto por el que se reforma la Ley Forestal," D.O., 20 de mayo de 1997 (observing, for example, reforms to articles one, three, four, five, six, and nine).

11. See generally "Acuerdo que regula la organización y funcionamiento interno del Instituto Nacional de Ecología y de la Procuraduría Federal de Protección al Ambiente," D.O., 17 de julio de 1992 (noting the date this federal agency was established).

12. See Matthew Brayman, *PVEM Emerges as a Player in Mexican Politics*, NEWS, July 11, 1997, available in LEXIS, Mexico Library, Thnws File (noting the 1997 election and comments made by the Green Party of Mexico (PVEM) secretary general that the 1997 elections were about the people demanding clean air and water).

in the making, particularly as a result of the 1997 summer federal elections.¹³

How could one expect a decent record of environmental legislative compliance and enforcement in a country where the contravention of the law is the daily rule rather than the exception and where the legal system in general is and has been historically plagued by the following:

- a) A persistent, systematic, and generalized pattern of institutionalized official corruption at all levels and branches of government. Throughout the national territory, widespread influence peddling, graft, racketeering, bribery, payoffs, kickbacks, and abuse of authority exists, which makes it the sixth most corrupt country in the world after Nigeria, Bolivia, Colombia, Russia, and Pakistan, according to a report by Transparency International;¹⁴
- b) Prevailing impunity and the lack of transparency and accountability on the part of public officials.¹⁵ This impunity is at times acknowledged by some high officials¹⁶ and for others, such as Dr. Clemente Valdés, has even been “legalized” by the governing class through laws designed in such a way that those officials simply do not have to account for or respond to anyone for the ways in which they govern, much less for the manner in which they use and abuse public funds;¹⁷

13. See *id.* (noting that the elections held in 1997 addressed issues such as clean air and water).

14. See David Aponte, *México, sexto lugar mundial en corrupción gubernamental*, LA JORNADA, Mar. 9, 1998, at 17; Juan Antonio Zúñiga M., *La corrupción en el servicio público, base de delitos: PGJDF*, LA JORNADA, Dec. 19, 1997, at 50; José Agustín Ortiz Pinchetti, *Máscaras, corrupciones y remedios*, LA JORNADA, Feb. 22, 1998, at 7; Marco Rascón, *Jurado popular vs la corrupción*, LA JORNADA, Nov. 4, 1997, at 16.

15. See generally ANDRÉS OPPENHEIMER, CRÓNICAS DE HEROES Y BANDIDOS (1998); see also Silvia Chávez González, *Es evidente la existencia de un clima de impunidad en el país: Ontiveros*, LA JORNADA, July 1, 1998, at 54.

16. See Rosa Elvira Vargas, *La sociedad reclamará lo que no se haga ahora, advierte el Presidente ante burócratas*, LA JORNADA, Dec. 9, 1997, at 1; see also González, *supra* note 15.

17. See CLEMENTE VALDÉS S., LA CONSTITUCIÓN COMO INSTRUMENTO DE DOMINIO 4-5 (1996).

- c) A simulated division of powers that still exists in the letter of the law,¹⁸ but in practice has been virtually eliminated;
- d) A Congress that, historically, has been nothing more than a mere rubber stamp mechanism to quasi-legitimize the decisions of the executive branch and has amended more than two-thirds of the articles of the constitution, blindly and obediently following the dictates of the President;¹⁹
- e) State Governors who even today, in the case of a majority of them, to a large degree serve at the pleasure of the President, despite the federal system of government provided for by the constitution;²⁰
- f) Ineffective public institutions that have become dysfunctional to the point of causing a breakdown in governance;²¹
- g) A notorious lack of independence in the judiciary, coupled with prosecutorial incompetence and dishonesty;²²
- h) Discrimination, inequality, and a systematic denial of justice to the poor majorities,²³ particularly the

18. See CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] arts. 49, 115 (Mex.).

19. President Carlos Salinas reformed 54 constitutional articles during his tenure. Only one of these reforms, in 1993, had the alleged purpose of reforming the administration of justice. In that case, under the pretext of protecting human rights, Salinas strengthened the power of the corrupt Public Prosecutor to order arrests without judicial involvement. See Manuel González Oropeza, *El desafío de la Justicia. La Administración de Justicia y el Estado de Derecho en México*, LEX, Aug. 1995, at 15, 16–17.

20. See CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] arts. 49, 115.

21. See Raúl M. Sánchez, *Mexico's Governmental Human Rights Commissions: An Ineffective Response to Widespread Human Rights Violations*, 25 ST. MARY'S L.J. 1041, 1042–43 (1994) (describing how the National Human Rights Commission, created in 1990, has been “largely ineffective” due to a lack of both prosecutorial power and accountability in the government).

22. See Raúl Llanos Samaniego, *Llama la Coparmex a “despolitizar” los cargos de procuración y administración de justicia*, LA JORNADA, Nov. 11, 1997, at 51.

23. See Carlos Camacho, *22 millones de mexicanos viven en la extrema pobreza: Paz Sánchez*, LA JORNADA, Dec. 2, 1997, at 46; Andrés Timoteo, *800 millones de personas desnutridas en el mundo: FAO*, LA JORNADA, Nov. 11, 1997, at 37.

indigenous peoples,²⁴ and at the same time, a system of justice that is often up for sale to whoever can pay for it and accessible only to the privileged few;²⁵

- i) Systematic police brutality,²⁶ extra-judicial executions,²⁷ deplorable incarceration conditions,²⁸ and widespread torture and violation of fundamental human rights which are establishing a worrisome pattern,²⁹ despite the increasing activity of non-governmental organizations, which are sanitized by the government;³⁰
- j) Governmental cooption of the various sectors of society, such as the professional and workers' unions, forming a corporate system of social control that breeds corruption;³¹ and
- k) The largely unchallenged reign, for more than sixty years, of a single political party that has operated as a so-called "rotating dictatorship," staying in power

24. See Kyra Núñez, *México, el país con más casos serios de violación de derechos*, LA JORNADA, Aug. 7, 1998, at 7 (noting that Mexico is recognized by a UN expert as one of the three worst violators of indigenous peoples' human rights).

25. See Claudia Herrera Beltrán, *Con dinero se tiene acceso a los "privilegios" de la ley: juristas*, LA JORNADA, Nov. 8, 1997, at 48.

26. See Antonio González Vázquez, *Tardaría 4 años "cambiar la policía cavernícola de hoy"*, LA JORNADA, Nov. 23, 1997, at 53.

27. See *Casos pendientes de solución*, LA JORNADA, Dec. 19, 1997, at 50; Ricardo Olayo, *Critica De la Barreda las pesquisas de la PGJDF*, LA JORNADA, Nov. 19, 1997, at 67; Humberto Ortiz Moreno, *Gutiérrez Flores: en el caso Buenos Aires hice lo que me ordenaron; ahora toca al juez decidir*, LA JORNADA, Nov. 5, 1997, at 59 (referring to a case involving petty criminals from Mexico City's "Buenos Aires" section caught and executed by police officers in the Ajusco mountains on the outskirts of the city).

28. See *Las cárceles del país, en el inframundo*, LA JORNADA, Aug. 4, 1998, at 27.

29. See Núñez, *supra* note 24; Jim Cason & David Brooks, *Graves violaciones a los derechos en México*, LA JORNADA, Dec. 5, 1997, at 9.

30. See Sánchez, *supra* note 21, at 1044; see also Miguel Sarre, *Control del ministerio público*, in ANUARIO DE DERECHO PUBLICO 131, 147 (1997).

31. See Jesusa Cervantes & Alonso Urrutia, *México no respeta acuerdos suscritos sobre trabajo*, LA JORNADA, Dec. 2, 1997, at 45; Fabiola Martínez, *En ascenso e impune, el gangsterismo sindical*, LA JORNADA, Nov. 10, 1997, at 68; Fabiola Martínez & Elizabeth Velasco, *Iniciativas de PAN y PRD buscan romper el corporativismo sindical*, LA JORNADA, Aug. 11, 1998, at 37.

through electoral fraud, that generates favors, and thrives on all of the above.³²

As if all of that was not enough, the country's precarious rule of law has been further shattered by the following:

- a) The scourge of drug trafficking and its role in organized crime;³³
- b) The use of political assassinations by the system, such as those in 1994 of PRI Presidential Candidate Luis Donaldo Colossio, PRI General Secretary José Francisco Ruíz Massieu, and of hundreds of opposition party members;³⁴
- c) The widespread lack of security and reign of violence in the country, the legal uncertainty in most transactions, and the inability of the institutions to cope with crime, which is increasingly recognized by the government itself³⁵ and exasperating the public.³⁶ The proliferation of incidents of lynching and self help,³⁷ thus prompting some hard-line sectors to demand the reinstatement of the death penalty³⁸ and even the suspension of basic rights to criminals;³⁹
- d) The operation of death squads (such as the infamous *Paz y Justicia* in Chiapas), of especially violent police groups (such as the *Zorros* and the *Jaguares* in

32. See Sánchez, *supra* note 21, at 1043; see also ANDRES OPPENHEIMER, BORDERING ON CHAOS: GUERRILLAS, STOCKBROKERS, POLITICIANS, AND MEXICO'S ROAD TO PROSPERITY 11 (1996).

33. See David McLemore, *DEA Chief Calls Texas Vulnerable: Corruption Threat High, Report Says*, DALLAS MORNING NEWS, Sept. 24, 1998, at A37.

34. See Guillermo Emiliano del Torro, *Foreign Direct Investment in Mexico and the 1994 Crisis: A Legal Perspective*, 20 HOUS. J. INT'L L. 1, 77 (1997).

35. See Humberto Ortiz Moreno, *Ilusorio, más seguridad sin atacar corrupción*, LA JORNADA, Jan. 9, 1998, at 51; Juan Manuel Venegas, *Jueces, leyes y abogados, barreras difíciles para la PGR*, LA JORNADA, July 27, 1998, at 18.

36. See Daniela Pastrana & Raúl Llanos, *En la marcha contra la violencia, reclamos al Presidente, derechos humanos y la SCJN*, LA JORNADA, Nov. 30, 1997, at 54; *Es grave el resentimiento de los mexicanos contra funcionarios*, LA JORNADA, Nov. 13, 1997, at 20.

37. See Oropeza, *supra* note 19, at 21.

38. See Juan Antonio Zúñiga M., *La pena de muerte no es alternativa ante el reclamo de alto a la violencia: Batres*, LA JORNADA, Dec. 1, 1997, at 52; *Las reformas a códigos penales no incluirían la pena capital*, LA JORNADA, Nov. 5, 1997, at 46.

39. See Raúl Llanos Samaniego, *Pide Burgoa suspender garantías a delinquentes que reincidan*, LA JORNADA, Nov. 28, 1997, at 63.

Mexico City)⁴⁰ and of other paramilitary groups that participate in rural and urban massacres (such as those in the *Ejido Morelia* in Taniperlas, *Acteal* in Chiapas, and *Aguas Blancas* and *El Charco* in Guerrero),⁴¹ and the increasing use of army intervention in civil police matters;⁴² and

- e) The proliferation of white collar crimes and official financial scandals, as will be discussed below.

How could there be a good record of environmental observance in such a “fundamentally flawed” system of justice where, according to Jorge Camil, the rule of law is nowhere to be found?⁴³

Consequently, this work, rather than covering in any degree of detail the existential problems of environmental law and justice in Mexico *per se*, deals with the general and specific impacts on environmental law as a result of the poor rule of law and the lack of administration of justice in Mexico.

II. ELECTIONS AND DEMOCRATIC TRANSITION

Decades of struggle by civil society and the organized opposition, which for many started with the bloody 1968 student movement repression⁴⁴ and wound up with the Chiapas Indian uprising in 1994, eventually resulted in electoral reforms. The impulse for reforms also came about due to the political system’s own collapse, itself prompted by presidential authoritarianism and political assassinations

40. See Bertha Teresa Ramírez, *Pruebas inculpan a ex jefes de Zorros y Jaguares*, LA JORNADA, July 2, 1998, at 31.

41. See Angeles Mariscal, *Aún sin veredicto, ex funcionarios implicados en el caso Acteal*, LA JORNADA, Aug. 7, 1998, at 6; Jim Cason & David Brooks, *La CIDH hizo 5 recomendaciones a México por el caso del ejido Morelia*, LA JORNADA, Oct. 30, 1997, at 9; Arnoldo Kraus, *Justicia*, LA JORNADA, Nov. 5, 1997, at 11; Martha García, *Indagarán grupos de derechos humanos el caso guerrerense*, LA JORNADA, Aug. 10, 1998, at 14; Maribel Guitérrez, *Castigará el ERPI a culpables de masacre en El Charco, advierte*, LA JORNADA, Aug. 11, 1998, at 8.

42. See Abraham Nuncio, *Jueces y militares*, LA JORNADA, Nov. 19, 1997, at 56; Eduardo R. Huchim, *Policías y soldados*, LA JORNADA, Nov. 26, 1997, at 8; Triunfo Elizalde, *Soldados, presuntos autores de 12 ejecuciones: centro De Vitoria*, LA JORNADA, Nov. 23, 1997, at 3; Ricardo Olayo & Raúl Llanos, *Criticán priístas la actuación de militares en la seguridad pública*, LA JORNADA, Nov. 23, 1997, at 57; Rubén Villalpando, *Militares habilitados en la PJF balearon a un joven en Juárez*, LA JORNADA, Nov. 11, 1997, at 47.

43. Jorge Camil, *Lex Talionis*, LA JORNADA, Mar. 6, 1998, at 13.

44. See *Former Officials Accused of Genocide in Massacre*, FORT WORTH STAR-TELEGRAM, Oct. 9, 1998, at 24.

during and after the Salinas Administration.⁴⁵ Corruption at the highest levels of government, including the family of President Salinas, also ushered in the reforms.⁴⁶ The 1997 elections gave Mexico the first semblance of a true and independent Congress; its lower house, the Chamber of Deputies, is no longer under the absolute one party rule, and the opposition parties together can form a majority.⁴⁷

The metropolitan area of Mexico City, where almost one-fourth of the nation's population is concentrated,⁴⁸ as well as many county and state governments and legislatures are now in the hands of the opposition. Former absolute presidential powers are slowly being curtailed to create checks and balances as mandated by the letter of the nation's constitution.⁴⁹

At the end of 1997, Mexico seemed to be finally heading toward a transition to democracy.⁵⁰ The country was slowly moving to what has been called a "renovation of the Mexican State" where, as already pointed out, the rule of law and the administration of justice, which includes a much needed radical reform of the judicial branch, remain at the top of the agenda.⁵¹ Jurist Sergio García Ramírez has stated that "[i]n any case, it seems that the old order has not yet disappeared, and the new one is not yet born. This is what is called an era of transition."⁵²

45. Most of which are still waiting to be solved and punished, such as the murders of Jalisco Cardinal Posadas Ocampo, PRI Presidential Candidate Luis Donaldo Colossio, PRI General Secretary José Francisco Ruíz Massieu in 1994, and Magistrates Abraham Polo Uscanga and Cecilia Martínez González in 1995 and 1996, respectively. See *Casos pendientes de solución*, *supra* note 27, at 50.

46. See *En el juicio a mi hermano Raúl, abusos que degradan el régimen de derecho*, dice CSG, LA JORNADA, Oct. 29, 1997, at 1.

47. This independence has not gone unchallenged by the federal government, which has paralyzed the Congress due to a variety of maneuvers. The situation has been caused by the incompetence of the new Congressmen. See Héctor Aguilar Camín, *Empates*, LA JORNADA, Dec. 1, 1997, at 1; Pablo Gómez, *La fundación de un poder*, LA JORNADA, Nov. 7, 1997, at 9.

48. See H.J. DE BLIJ & PETER O. MULLER, *GEOGRAPHY REGIONS AND CONCEPTS* 266 (1992).

49. See CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] art. 49.

50. See Margarita Gonzalez de Pazos, *Mexico Since the Mayan Uprising: Government and Zapatista Strategies*, 10 ST. THOMAS L. REV. 159, 173 (1997).

51. Note, *Liberalismo Contra Democracia: Recent Judicial Reform in Mexico*, 108 HARV. L. REV. 1919, 1919 (1995) [hereinafter *Liberalismo Contra Democracia*].

52. Sergio García Ramírez, *El Estado de Derecho y la reforma del Poder Judicial*, PEMEX-LEX, Jan.-Feb. 1996, at 4.

III. AN AGENDA FOR REFORM

The reform agenda was pushed for by the opposition parties and was initially convened by the federal government.⁵³ The government, at first, even contemplated some constitutional amendments,⁵⁴ but in the ensuing months has been largely stalled by official foot dragging due to several factors:

- a) The adverse results the PRI suffered in the federal elections in the summer of 1997;⁵⁵
- b) The hardening of the government's position in the Chiapas conflict;⁵⁶
- c) The emergence of additional armed rebel groups;⁵⁷
- d) The "FOBAPROA" financial scandal,⁵⁸ which includes the murky acquisition of the World Trade Center building involving the last three Ministers of Finance;⁵⁹
- e) Abuses by the banking system and other political and financial scandals;⁶⁰

53. See *Ciro Pérez Silva, Comisión bicamaral para la reforma del Estado, plantean los diputados*, LA JORNADA, Nov. 4, 1997, at 7; *Ciro Pérez Silva & Elizabeth Velasco, Convocarán diputados a diseñar y construir la reforma del Estado*, LA JORNADA, Oct. 30, 1997, at 3; *Andrea Becerril & José Antonio Román, Formalizan invitación al Senado para la reforma*, LA JORNADA, Nov. 5, 1997, at 3; *José Gil Olmos, La reforma del Estado no será un proceso trunco: Chuayffet*, LA JORNADA, Nov. 26, 1997, at 7.

54. See *La reforma del Estado exige revisar temas de la Carta Magna*, LA JORNADA, Nov. 23, 1997, at 10.

55. See *Linda Robinson & Lucy Conger, The Monster of Mexico*, U.S. NEWS & WORLD REP., July 21, 1997, at 44, 44.

56. See *Linda Robinson & Lucy Conger, A Revolt That Won't Go Away*, U.S. NEWS & WORLD REP., Jan. 19, 1998, at 50, 50.

57. See *José Gil Olmos, CIHMA: operan en el país 14 organizaciones guerrilleras*, LA JORNADA, Dec. 2, 1997, at 6 (describing how as many as 14 rebel groups are said to be operating in the country).

58. See *Enrique Semo, Fobaproa: ¿lo pasado, pasado?*, PROCESO, July 5, 1998, at 34; *Antonio Castellanos & Roberto González, El Fobaproa desde sus orígenes*, LA JORNADA, Aug. 7, 1998, at 17; *Creado en 1990, el Fobaproa se quedó sin recursos en 4 años*, LA JORNADA, Aug. 7, 1998, at 17.

59. See *Antonio Jáquez, Caso WTC: De Paula aporta nuevos datos, mientras Ortiz y los Gutiérrez Cortina rechazan sus acusaciones*, PROCESO, July 26, 1998, at 31-32; *Alonso Urrutia & Víctor Ballinas, Aspe, Gurría y Ortiz conocían los malos manejos en el WTC desde 91*, LA JORNADA, July 27, 1998, at 21.

60. Scandals involving the "Barzón" movement and the white collar crimes of bankers Jorge Lanquar Rocha, Isidoro Rodríguez, "El Divino," and Cabal Peniche are a few examples. See *David Aponte, Crean tres fiscalías contra delitos fiscales y financieros*, LA JORNADA, Aug. 11, 1998, at 6; *Víctor Zendejas,*

- f) The prevalence of pending political accounts stemming from electoral fraud;⁶¹
- g) The repeated downfall of state governors accused of illegal behavior or outright incompetence;⁶²
- h) The deterioration of the economy, which started with the crisis provoked by the currency devaluation of December 1994;⁶³ and
- i) The re-appearance of presidential authoritarianism.⁶⁴

The renovation of the State agenda includes the following:

- a) The re-establishment of the empire of the rule of law;
- b) The reform of the administration of justice;⁶⁵
- c) The strengthening of Congress;⁶⁶
- d) The reconsideration of the highly criticized neo-liberal economic model of development, which was implemented in the country, within the scope of

Piden investigar la legalidad del rescate bancario, LA JORNADA, Aug. 9, 1998, at 6.

61. See OPPENHEIMER, *supra* note 32, at 267 (expanding on the electoral fraud in Tobasco).

62. See *New Report Links Politicians, Drug Cash*, L.A. TIMES, Feb. 23, 1997, at A8 (contending that the governor of Morelos collaborates with drug traffickers); see also *Healing in Mexico?*, CHI. TRIB., Jan. 18, 1994, at 19 (discussing the removal of a former governor of Chiapas for corruption).

63. See OPPENHEIMER, *supra* note 32, at 219.

64. See Juan Manuel Venegas & Mireya Cuéllar, *Con su radicalismo verbal, el Presidente no concilia, sino tensa*, LA JORNADA, July 2, 1998, at 8.

65. See Rubén Jaime Flores Medina, *Estado Democrático de Derecho y Reforma del Poder Judicial*, REVISTA JURÍDICA JALISCIENSE 67, 68 (1995); Jesús Aranda, *Analizan ministros reformas a la Suprema Corte*, LA JORNADA, June 16, 1998, at 12; Ciro Pérez Silva & Mireya Cuéllar, *Enfadan al PRI críticas de ministros al sistema*, LA JORNADA, Apr. 2, 1998, at 18; Humberto Ortiz Moreno, *Rodríguez: más rigidez al seleccionar jueces*, LA JORNADA, Jan. 2, 1998, at 52; Jesús Aranda & Rosa Elvira Vargas, *Aguinaco: resolvió la Corte 6 mil 433 asuntos durante el último año*, LA JORNADA, Dec. 16, 1997, at 38; Jesús Aranda, *Elaboran diagnóstico de la Corte y del Poder Judicial*, LA JORNADA, Feb. 4, 1998, at 46; Jesús Aranda, *La reforma del Estado debe pasar por la de la Judicatura: Gudiño*, LA JORNADA, Dec. 3, 1997, at 43; Jesús Aranda, *Descarta Mario Melger carácter inquisitorial en el órgano de enlace*, LA JORNADA, Nov. 17, 1997, at 68; Georgina Saldierna V., *Los tres poderes buscarán reformar el sistema judicial*, LA JORNADA, Nov. 15, 1997, at 53.

66. See Elba Esther Gordillo, *Un Senado para fortalecer la República*, LA JORNADA, Nov. 3, 1997, at 8.

world globalization, through less than democratic methods and has impoverished millions;⁶⁷

- e) The establishment of an independent institutional mechanism for public accountability;
- f) The respect for fundamental human rights and the empowering of the National Human Rights Commission as an independent outfit;⁶⁸
- g) The recognition of rights for the fourteen million members of the indigenous population;⁶⁹
- h) The rescue of a real federal system true to the word of the Constitution;⁷⁰
- i) The need to democratize the Federal District;⁷¹
- j) The need to launch a process of decentralization;
- k) The liberation of the autonomy of counties and their municipal governments;⁷²
- l) The control of campaign spending by political parties;⁷³

67. See Ricardo Olayo, *La política neoliberal ha afectado la vida de las grandes ciudades*, LA JORNADA, Apr. 6, 1998, at 39; Jesusa Cervantes & Alonso Urrutia, *México ha perdido un millón de empleos por el TLC; EU, 500 mil*, LA JORNADA, Dec. 1, 1997, at 40; José Agustín Ortiz Pinchetti, *Democratización y Globalización*, LA JORNADA, Nov. 16, 1997, at 7; Horacio Flores de la Peña, *Neoliberalismo: los diez mandamientos/II*, LA JORNADA, Nov. 13, 1997, at 19; Ugo Pipitone, "Neoliberales y globalizadores," LA JORNADA, Nov. 4, 1997, at 22.

68. Respect for human rights is demanded from within the Commission itself, and from abroad. See Victor Ballinas & Alonso Urrutia, *Demanda Roccatti a diputados dar autonomía a la CNDH*, LA JORNADA, July 31, 1998, at 49; Triunfo Elizalde & Luis Boffil, *Piden autonomía real del Ejecutivo para la CNDH*, LA JORNADA, Dec. 1, 1997, at 46; Triunfo Elizalde, *La falta de autonomía de la CNDH impide mejorar los derechos humanos*, LA JORNADA, Nov. 26, 1997, at 48; *Derechos humanos, en etapa difícil, señala Roccatti*, LA JORNADA, Nov. 3, 1997, at 1.

69. See María Esther Ibarra, *Teme el gobierno reconocer los derechos indígenas*, LA JORNADA, Aug. 11, 1998, at 17.

70. See *Con el federalismo, colaboración sin sometimiento*, LA JORNADA, July 2, 1998, at 15; Andrea Becerril & Elizabeth Velasco, *Dar plena vigencia al federalismo, exige García Villa*, LA JORNADA, Nov. 19, 1997, at 6; Juan Manuel Venegas, *Política económica, federalismo y DF, en la agenda de Calderón*, LA JORNADA, Nov. 5, 1997, at 3.

71. Which includes the need for the Federal District to embark on a "reform of the state" of its own. See Daniela Pastrana, *Reforma política: proceso lento por diferencias políticas*, LA JORNADA, July 7, 1998, at 47.

72. See Elizabeth Velasco & Ciro Pérez Silva, *Se ampliarían hasta en 5 veces los fondos municipales*, LA JORNADA, Oct. 30, 1997, at 5.

73. See José Gil Olmos, *Multas del IFE a partidos por \$6 millones*, LA JORNADA, Aug. 11, 1998, at 8.

- m) The opening of opportunities for citizen participation in the handling of public policy, including the key issues of transparency and accountability;⁷⁴
- n) The regulation of the mass media;⁷⁵ and
- o) The creation of a public civil service.

IV. VIABILITY OF THE REFORM

The growing left of center Party of the Democratic Revolution (PRD) has proposed an agenda of twelve items to assume "Commitments for Democratic Governance," many of which are directly related to the rule of law and the administration of justice.⁷⁶ Most of these issues are shared by the various political parties but are resisted by the official Institutional Revolutionary Party (PRI) and by the Federal Government.⁷⁷ The PRI itself, considered by many to be a dying political party, is experiencing some humble efforts from within to change and democratize. The platforms prioritize those issues involving the rule of law and the administration of justice. This was signaled in the summer of 1998 with the emergence of the *Corriente Renovadora*,⁷⁸ which was integrated by party members with national prestige and not necessarily by the disaffected, who have not been able to secure their desired bureaucratic positions⁷⁹ or who have had to make room for a new foreign educated generation of young, ambitious, and rather unprincipled technocrats. On the other hand, there are those orthodox elements who struggle to keep the party alive by maintaining

74. Ninety percent of Mexicans believe public funds are not handled legally by public officials. See *Es grave el resentimiento de los mexicanos contra funcionarios*, *supra* note 36, at 20; José Agustín Ortiz Pinchetti, *El derecho a la transparencia*, LA JORNADA, Aug. 9, 1998, at 4.

75. See Eduardo R. Huchim, *El chayote*, LA JORNADA, Oct. 29, 1997, at 8.

76. See *Propone el PRD a Zedillo una agenda política de 12 puntos*, LA JORNADA, Nov. 13, 1997, at 6.

77. See Elena Gallegos, *El PRI, payaso de las cachetadas: Manuel Bartlett*, LA JORNADA, Dec. 1, 1997, at 1.

78. See David Aponte, *Autonomía y democracia interna, bases de la Corriente Renovadora*, LA JORNADA, July 2, 1998, at 12; Beatriz Zavala Peniche, *Nueva realidad del partido de Estado*, LA JORNADA, Nov. 6, 1997, at 12.

79. An example is former Senator Gustavo Carvajal, who lost the party nomination for candidate as Governor of the State of Veracruz. See Elena Gallegos, *La nueva generación priísta, causa de la pérdida de espacios*, LA JORNADA, July 7, 1998, at 9.

the authoritarian practices that have kept it in power for the better part of this century.⁸⁰

The times are not, in the world sphere, necessarily prone to such changes and are much less prone to the radical ones that are needed in Mexico in order to make it a truly democratic, law-abiding society. Globalization and neo-liberalism are not particularly friendly to the rule of law, which is increasingly seen by its opponents as a hindrance to free and unimpeded foreign investment, the trade of goods and services, and the generation of wealth at all costs. This is a problem that is not alien to international environmental issues.⁸¹

Evidence of this trend was seen in the current secretive negotiations of the Multilateral Agreement on Investment at the Organisation for Economic and Cooperative Development. One of the agreement's aims is to liberate foreign investors from compliance with environmental performance requirements in the recipient countries.⁸² In fact, it is a widely shared truth that economic modernization and economic change have not come along in Mexico with the modernization of the legal system and the institutions that administer justice.⁸³

V. INTERNATIONAL PRESSURE

In the negotiations between Mexico and the European Union (EU) regarding the Agreement of Economic Association and Political Cooperation,⁸⁴ Mexico sought a more pure economic agreement, whereas the EU was interested in several side issues that Mexico argued could affect its sovereignty. This matter was addressed more directly than during the NAFTA negotiations, where side issues were

80. See Gallegos, *supra* note 77.

81. See Alberto Székely, *Compliance with Environmental Treaties: The Empirical Evidence. A Commentary on the Softening of International Environmental Law*, 91 ASIL PROC. 234, 235 (1997); see also *Liberalismo Contra Democracia*, *supra* note 51, at 1919.

82. See FINANCE & TRADE POLICY RESEARCH CENTRE, *THE DEVELOPMENT IMPLICATIONS OF THE MULTILATERAL AGREEMENT ON INVESTMENT* 4 (1998).

83. Such is precisely the view expressed in the foreword of *A la Puerta de la Ley: El Estado de Derecho en Mexico*. See LUIS RUBIO ET AL., *A LA PUERTA DE LA LEY: EL ESTADO DE DERECHO EN MEXICO* 10 (Héctor Fix Fierro ed., 1994); Luis González Souza, *Estado democrático de derecho*, LA JORNADA, Aug. 8, 1998, at 13.

84. See David Aponte, *El acuerdo con la UE, atado a democracia y derechos humanos*, LA JORNADA, Oct. 27, 1997, at 1.

restricted to the environment and labor. The demand of the EU negotiators for the incorporation of a so-called "democratic clause," which included the issues of democracy and respect for human rights,⁸⁵ was fiercely, albeit ineffectively, resisted by Mexican diplomats and Trade Ministry representatives. When they had to give in they publicly claimed that the clause does not affect the country's sovereignty, which was precisely the opposite of what they had argued during the negotiations.⁸⁶

In the process initiated by the NAFTA negotiations, the Mexican government had almost no qualms in opening the country to all types of manifestations of American culture, including parts that are not so good and even some parts that are bad. Mexico also had no qualms about emulating U.S. structures, mechanisms, and institutions, as well as legislation having to do with a myriad of matters, particularly in the trade field. Any suggestions, however, that Mexico should take advantage of some of the positive experiences from the administration of justice in the United States have been rejected as an intrusion and with exacerbated nationalism.⁸⁷ The 1998 *Casa Blanca* money-laundering sting operation provided a good opportunity for such displays of nationalistic fervor.⁸⁸

Increasing international concern over the lack of human rights in Mexico⁸⁹ has met with a similar official response. This response seems to be even harsher as a result of Resolution L.18 of the UN Subcommittee on the Prevention of Discrimination and the Protection of Minorities issued on August 20, 1998 and entitled *Development of the Situation of*

85. *See id.*

86. *See* José Antonio Román, *La cláusula democrática con la UE no fue impuesta*, LA JORNADA, Oct. 28, 1997, at 5; Andrea Becerril, *Rechaza Blanco mezclar asuntos comerciales con derechos humanos*, LA JORNADA, Mar. 7, 1998, at 21.

87. *See* Jesús Aranda, *Ataque a la autonomía de tribunales, pretender su similitud con los de EU*, LA JORNADA, Apr. 27, 1998, at 45.

88. M. Delal Baer, *Both Sides Need to Defuse Sting Debacle with Mexico*, HOUS. CHRON., June 24, 1998, at A27.

89. *See* Genaro Bautista, *Pedirán al gobierno respeto a los derechos humanos*, LA JORNADA, Aug. 11, 1998, at 13; Alma E. Muñoz, *La CNDH, instancia ilegítima y tal vez hasta encubridora: AI*, LA JORNADA, Nov. 4, 1997, at 8; Triunfo Elizalde & Rosa Elvira Vargas, *Autonomía para los ombudsmen, pide Mary Robinson*, LA JORNADA, Nov. 28, 1997, at 54; Alejandra Parra, *Soluciones, no discurso retórico, exige AI a México*, LA JORNADA, Nov. 5, 1997, at 52; Jim Cason & David Brooks, *Piden a Clinton abordar el tema de derechos humanos*, LA JORNADA, Nov. 13, 1997, at 3.

Human Rights in Mexico.⁹⁰ The resolution includes an appeal to the Mexican government to combat impunity.⁹¹ In the face of mounting governmental, non-governmental, and even multilateral pressures from abroad, only some cosmetic measures have been taken, such as the creation of the Interministerial Human Rights Commission, still another ineffectual bureaucratic institution.⁹² The inability of the Federal Government to deal with the Chiapas conflict and with the proliferating armed groups in the country has already led to growing expressions of international concern, including concern expressed by the U.S. military.⁹³

VI. SOME PRECEDENT OF SIMULATED AND INEFFECTUAL CHANGE

Typically, some simulated and politically motivated moves in the direction of modernizing the legal system and the administration of justice have been made to quiet public opinion, some of which are worth recalling.

- a) Self control: In late 1982 the Secretariat of the Comptroller General (Secretariat) was established,⁹⁴ which was a mere front set up in response to public outcry regarding widespread governmental corruption. The government is supposed to control itself, and the behavior of public servants from within. The Secretariat, however, is a far cry from the U.S. General Accounting Office. For instance, it is a government office charged mostly with overseeing and administratively sanctioning the honest performance of public officials in the use of public funds. It lacks the necessary powers to bring direct criminal charges, thus having to depend for that on the largely inefficient and corrupt *ministerio publico* (or public prosecutor), a prosecutorial institution

90. See Kyra Nuñez, *Combatir la impunidad, pide una subcomisión de la ONU a México*, LA JORNADA, Aug. 21, 1998, at 3.

91. See *id.*

92. See David Aponte, *Instalan Comisión Intersecretarial de Derechos*, LA JORNADA, Nov. 7, 1997, at 55; *El país cumplirá sus compromisos sobre derechos humanos*, LA JORNADA, Oct. 30, 1997, at 9.

93. See David Aponte, *Militares de EU piden visitar bases del Ejército en Chiapas*, LA JORNADA, Aug. 10, 1998, at 1.

94. See Arthur Golden, *Graft Remains, but Less at Upper Levels, Mexican Says*, SAN DIEGO UNION-TRIBUNE, Oct. 15, 1987, at A17 (stating that President Miguel de la Madrid created the Secretariat soon after taking office in December 1982 due to criticism of widespread corruption).

analyzed later in this Article. Consequently, the Secretariat has not brought any major public figure to justice in sixteen years. In addition, Secretariat has itself been accused of dishonesty in the use of public funds.⁹⁵

- b) The “ombudsman” that really isn’t: In 1990 the merely advisory National Human Rights Commission was created⁹⁶ to supposedly deal with the inefficiency and violence of the Federal Office of the Attorney General, the police forces at large, and other similar ineffectual outfits. This gave the impression of governmental action. The government established the Commission rather than solve problems with the so called “Prosecuting Offices” for social defense, the protection of consumers, the agrarian communities, and the environment. Although, the Commission also lacks the power to issue binding rulings, by 1995 cases before the Commission dealt with the violation of the rights of prisoners, abuse of authority, illegal arrest by the “judicial police,” delay in bringing detained individuals to the jurisdiction of the judge, denial of services at public health institutions, false official accusations, medical negligence and malpractice, denial of the constitutional right to petition, official responsibilities for illegal acts, and torture.⁹⁷
- c) The filter of the “Executive’s parallel courts”: Rather than strengthening and letting loose the judiciary, the government embarked on setting-up its own parallel jurisdictional system through so-called “administrative tribunals” (*tribunales de lo contencioso administrativo*). The tribunals have a more than questionable constitutional foundation⁹⁸ and have been set up to deal with specialized legal

95. See Elizabeth Velasco & Ciro Pérez Silva, *Propondrá el PT la desaparición de la Secodam*, LA JORNADA, Oct. 30, 1997, at 6; Ciro Pérez, *Posibles violaciones legales en la Cuenta Pública de 1996*, LA JORNADA, Dec. 2, 1997, at 19; Gustavo Castillo García, *Investigan a ex jefe policiaco por enriquecimiento ilícito*, LA JORNADA, Nov. 4, 1997, at 57.

96. See “Decreto por el que se crea la Comisión Nacional de Derechos Humanos como un órgano desconcentrado de la Secretaría de Gobernación,” D.O., 6 de junio de 1990; “Reglamento Interno De La Comision Nacional de Derechos Humanos,” D.O., 12 de noviembre de 1992.

97. See Oropeza, *supra* note 19, at 20.

98. See *id.* at 22.

cases. These tribunals, whose procedural rules are usually extremely cumbersome, are primarily under the Executive's control⁹⁹ and, amazingly, are not given sufficient enforcement powers.¹⁰⁰

- d) The so-called "Zedillo Judicial Reform": PRI candidate Ernesto Zedillo was forced to include the rule of law and a reform to the administration of justice as key issues in his presidential campaign. Some of the reasons for including such issues within his campaign were human rights violations, drug trafficking, a steep increase in organized crime, the shock of the 1994 Chiapas uprising, political assassinations, and the murders of journalists. The first financial scandals, the emerging evidence of corruption in the out-going presidential family, along with the long accumulated social exasperation with the situation of law and order in the country also shaped Zedillo's campaign platform. This political platform was more typical of the opposition parties of the past. As Manuel González put it:

Due to the political crisis, the legal system is also damaged and the enforcement apparatus is in a disadvantage every time there is an attempt to bring it back into place.

. . . .

At the nucleus of all the problems is the omnipotent and absolute presidential system that we have formed since the long Díaz Administration in the limits between the 19th and the 20th Centuries.¹⁰¹

What Zedillo did to fulfill his campaign promises in the first days of his tenure illustrates and explains why, well into the latter part of his six-year administration, the situation is

99. See Michael C. Taylor, *Why No Rule of Law in Mexico? Explaining the Weakness of Mexico's Judicial Branch*, 27 N.M. L. REV. 141, 164 (1997); STEPHEN ZAMORA & DAVID LÓPEZ, INTRODUCTION TO THE MEXICAN LEGAL SYSTEM (forthcoming 1999); EMILIO MARGAÍN MANATOU, DE LO CONTENCIOSO ADMINISTRATIVO 77 (Editorial Porrúa, México, 1997); JOSÉ LUIS VAZQUEZ ALFARO, EVOLUCIÓN Y PERSPECTIVA DE LOS ÓRGANOS DE JURISDICCIÓN ADMINISTRATIVA EN EL ORDENAMIENTO MEXICANO 156 (1991).

100. See Oropeza, *supra* note 19, at 18.

101. *Id.* at 16.

much worse,¹⁰² which Zedillo recognizes himself.¹⁰³ Upon entering office, Zedillo sent to the still PRI-dominated Congress a so-called judicial reform package, which included as many as twenty-seven constitutional amendments.¹⁰⁴ As a typical “miraculous” result of the perverse nature of the political system still prevailing in the country, Congress passed the reforms in just ten days. Additionally, enough state legislatures ratified them to publish them only seventeen days later, thus putting them immediately into force.¹⁰⁵ In less than a month, President Zedillo had ensured legislation that was heralded as the cure to the most endemic problems in the administration of justice.¹⁰⁶

Sergio García Ramírez has commented,

The reform process was carried out with extraordinary confidentiality and rush, which are improper of a Constitutional change heralded—as was said—as the most important reform of the Judicial branch in this Century.

. . . . [T]en days was the real time available for the parliamentary work involving the great reform of the Judiciary.

. . . .

The unusual speed and the scarce debate around the debate have produced worrisome consequences.¹⁰⁷

García Ramírez adds that judicial reform was the “object,” but that the members of the judiciary were not actors in it.¹⁰⁸ The reform dealt exclusively with the macro aspects of the administration of justice in Mexico and did not deal with its

102. See *En las leyes esta la base para una convivencia pacífica: Zedillo*, LA JORNADA, Feb. 5, 1998 at 7; Sam Dillon, *Zedillo Lectures the Mexicans: Obey the Law*, N.Y. TIMES, Oct. 1, 1996, at A3 (arguing that although Zedillo called on Mexicans to create a new culture based on law, he has missed opportunities to help Mexico break from its lawless past).

103. See Rosa Elvira Vargas, *En las leyes está la base para una convivencia pacífica: Zedillo*, LA JORNADA, Feb. 5, 1998, at 7.

104. See Taylor, *supra* note 99, at 158.

105. See Héctor Fix-Fierro, *Judicial Reform and the Supreme Court of Mexico: the Trajectory of Three Years*, 6 U.S.-MEX. L.J. 1, 2 (1998).

106. See Taylor, *supra* note 99, at 158 (asserting Zedillo’s changes to the courts, creating new institutions and modifying old ones, represent a milestone).

107. Ramírez, *supra* note 52, at 11.

108. *Id.*

micro components, which are the ones that really interest millions of individuals. The reform also left out highly important matters such as effective separation of powers, true autonomy of the judiciary, and consequently, the strength of the rule of law.¹⁰⁹ Ramírez suggests that the judiciary should have been given the power to directly propose to Congress both legislation on the administration of justice and sufficient and certain financial resource requirements.¹¹⁰

Through a questionable procedure that was heavily criticized,¹¹¹ Zedillo dissolved the Supreme Court and created a newly re-organized one with eleven instead of twenty-six members.¹¹² The rush and lack of expertise with which such sweeping actions were taken lamentably resulted in the country being deprived, in gross violation of the Constitution, of one of the three federal powers of government for more than a month.¹¹³ The gap occurred because authors of the legislation had overlooked including adequate provisions to ensure continuity between the outgoing and the incoming justices.¹¹⁴ Therefore, there was no Supreme Court in Mexico between December 1994 and February 1995.¹¹⁵ According to García Ramírez, the Judicial branch was “decapitated,” a situation which certainly “does not militate in favor of the rule of law.”¹¹⁶

Zedillo’s reform also reduced a justice’s term from lifetime to fifteen years.¹¹⁷ According to a new procedure for the designation of justices, the President is now expected to fill vacancies by submitting a list of three candidates to the Senate, which must decide by a two-thirds majority.¹¹⁸ Incidentally, this was at a time when a full three-quarters of the seats in the Chamber were in the hands of the PRI.¹¹⁹ For the first set of new justices, however, the President originally

109. *See id.* at 14–15.

110. *See id.* at 15.

111. *See Taylor, supra* note 99, at 158 (explaining that Zedillo’s replacement of Supreme Court ministers did not pass without criticism).

112. *See id.* at 159.

113. *See Ramírez, supra* note 52, at 11.

114. *See id.*

115. *See id.*

116. *Id.*

117. *See Taylor, supra* note 99, at 160.

118. *See id.* at 160–61.

119. *See id.* at 159.

submitted a list of eighteen instead of thirty-three candidates to cover the eleven seats. Only later did he attempt to comply with the new rule that he had just proposed and which had been approved by Congress.¹²⁰

Additionally, a Council of the Federal Judiciary (*Consejo de la Judicatura Federal*) was established under the pretense that it would be conducive to the independence of the judiciary by taking over the administrative decisions, appointments, and disciplinary actions involving the federal judicial branch.¹²¹ The Council, which is presided over by the Supreme Court Chief Justice and implemented by three magistrates or judges from lower courts, also includes an appointee of the executive branch and two appointees selected by the Senate.¹²² This directly contravenes the independence that the Mexican Constitution provides to the judicial branch. Sergio García Ramírez indicated that “such Councils will hardly keep partisan winds away from the ship of justice . . . and will not add anything to the autonomy of the judiciary.”¹²³ Given its limitations, the Council is likely to be reformed in the short run.¹²⁴

An additional notable feature of the “reform” was the creation of so-called *acciones de inconstitucionalidad* to combat the unconstitutionality of legislation. This procedure is riddled with impractical requirements and can be exercised only by the Attorney General, by thirty-three percent of the members of either house of Congress, or by thirty-three percent of the state legislatures. Additionally, the procedure can only be exercised within thirty days of the law’s publication, as if failing to challenge the legislation within that restricted period of time would magically make it constitutional. These constitutional review actions empower the Supreme Court to strike down unconstitutional legislation through a declaration of invalidity. All other unconstitutional legislation remains valid and not open to challenge. How could the Attorney General, an officer who

120. See *id.* (stating that Zedillo submitted a list of eighteen instead of thirty-three proposed names, and that additional nominations to the original eighteen were added subsequently to satisfy the constitutional requirement).

121. See Mario Melgar Adalid, *El Consejo de la Judicatura Federal y la Reforma al Poder Judicial de México*, 13 *ARS IURIS* 185 (1995).

122. See ZAMORA & LÓPEZ, *supra* note 99 (describing the structure of the Federal Court System).

123. Ramírez, *supra* note 52, at 12.

124. See *El Consejo de la Judicatura no ha logrado sus objetivos*, LA JORNADA, Nov. 24, 1997, at 12.

serves at the pleasure of the President, dare to challenge the constitutionality of a piece of legislation that has been promulgated and published by the President?

Another totally unbelievable component of the reform is the now permissible lack of enforcement of *amparo* decisions. This reform component just excuses and legitimizes what has always been an alarming record of nonenforcement despite the *amparo* decisions' unquestionable binding and imperative force. According to the new provisions of Article 107 of the Constitution,¹²⁵ the Supreme Court has the discretion to excuse enforcement of *amparo* decisions when it determines that such enforcement may gravely affect society or third parties in a proportion greater than the economic benefits that could be derived by the plaintiff.

Three years after the Zedillo reform came into force, the prosecutorial authorities, in the face of their almost total defeat in fighting crime and insecurity, sought to blame the judiciary for the situation of the rule of law and the administration of justice in the country. The allegations of the Attorney General, in that sense, sparked an unusual incident of mutual public accusations between the executive and the judicial branches.¹²⁶ The political debate cornered the Supreme Court into the sorry task of having to come to the defense of the judiciary and the *amparo* procedure.¹²⁷ The Supreme Court was also forced to create a mechanism for the defense of its autonomy.¹²⁸ A new opportunity to deal with

125. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] art. 107.

126. See *Revelan miembros del Poder Judicial pugnas con la PGR*, LA JORNADA, Nov. 3, 1997, at 59; *Ministro de la Corte censura a Madrazo*, LA JORNADA, Nov. 4, 1997, at 1; *La PGR acusa sin pruebas, señala Del Río*, LA JORNADA, Nov. 24, 1997, at 14; Jesus Aranda, *Realiza Madrazo una campana de linchamiento: jueces y magistrados*, LA JORNADA, Nov. 5, 1997, at 45.

127. See *Suprema Corte de Justicia de la Nación. A la Opinion Publica*, LA JORNADA, Nov. 7, 1997, at 61 [hereinafter *Suprema Corte*]; Emilio Krieger, *Un deplorable manifiesto judicial*, LA JORNADA, Nov. 11, 1997, at 41; Jesús Aranda, *Basta de ataques demagógicos, exige la Corte*, LA JORNADA, Nov. 7, 1997, at 1.

128. See *Crea la Corte comisión para defender su autonomía*, LA JORNADA, Nov. 8, 1997, at 1; Jesús Aranda, *Nace la comisión en pro de la autonomía jurisdiccional*, LA JORNADA, Nov. 10, 1997, at 41; "Acuerdo General Conjunto del Tribunal Pleno de la Suprema Corte de Justicia de la Nación y del Pleno del Consejo de la Judicatura Federal número 1/1997, que crea la Comisión Conjunta para garantizar y fortalecer la autonomía de los órganos e independencia de los integrantes del Poder Judicial de la Federación," D.O., 10 de noviembre de 1997.

the matter was lost by the President,¹²⁹ who called the whole thing “a little problem of forms.”¹³⁰

It would thus certainly be daring to allege that the Zedillo reform has had any significant positive effect in the administration of justice, a subject that remains a top priority issue pending in the political agenda of the country.¹³¹ Additionally, as José Luis Soberanes has put it, “We must not forget that many States of the Union have not yet made their corresponding judicial reform, as the federal one of 31 December 1994, and that those that have, produced a ridiculous reform that looks more like a hoax.”¹³² Additionally, Manuel González Oropeza states, “The panorama of the judiciary in the 32 [sic] States of the Union is not encouraging, as regional politicians influence them and the appointment of judges is subject to the influence of the governors. Their administration is practically nonexistent.”¹³³

VII. ROLE OF THE LEGAL COMMUNITY

The current literature shows that legal specialists are beginning to deal openly and quite critically with the existential problems of the rule of law and the administration of justice in Mexico, something that is a novelty in Mexican legal academia. In the past, legal researchers were more than shy about criticizing the country’s legal system, its institutions, and particularly, the government. All of this has been a sign of the censorship, often self-imposed, resulting from restrictions in political freedoms, including freedom of expression, which began opening up only in the mid-seventies.¹³⁴

129. See Rosa Elvira Vargas, *Rechaza Zedillo que exista un enfrentamiento Ejecutivo-Judicial*, LA JORNADA, Nov. 10, 1997, at 3.

130. *Id.*

131. See Medina, *supra* note 65, at 68.

132. José Luis Soberanes Fernández, *Para completar la reforma judicial*, REVISTA DEL SENADO DE LA REPÚBLICA, Apr.–June 1995, at 129.

133. Oropeza, *supra* note 19, at 23.

134. This phenomenon is identified in a working paper by Yves Dezalay and Bryant Garth. See generally Yves Dezalay & Bryant Garth, *Building the Law and Putting the State into Play: International Strategies Among Mexico’s Divided Elite* (A.B.F. Working Paper #9509, 1996). Unfortunately, the authors fail to identify correctly those specialists who are genuinely contributing with independent and critical analysis of the rule of law and of the administration of justice in Mexico. Instead, they ascribe the new attitude precisely to those who have been the apologists of the status quo in the country’s legal system. This is a mistake which is probably owed to a certain obsession, on the part of foreign observers, with the role of Mexican elites, who, pursuing political careers from

Additionally, those in the legal profession have been more often eager participants and beneficiaries of the political and legal systems—of their juicy perks, and of all their shortcomings and diseases—rather than a force to uphold the respect of the law.¹³⁵ Thus, obviously with some honorable exceptions, many practitioners, legal department governmental officials, prosecutors, court clerks and officers, judges, and politicians trained in the law have been more responsible for the problems than for their prevention and solutions.

However, as the country opens up politically and transitions to a more democratic system, a new, albeit small, generation of lawyers, professors, legal research fellows and others who are highly concerned with the situation is beginning to emerge. They are starting to analyze and denounce these problems, studying their roots and possible solutions, and speaking out for changes to ensure enforcement of and compliance with the law. They are also seeking legal security and certainty and a better administration of justice, all of which will serve well their mostly tarnished and well-earned public images and reputations. Their statements and scholarly writings are widely cited in this work.

VIII. AN INVENTORY OF FEATURES THAT PRECLUDE THE EMPIRE OF THE RULE OF LAW IN MEXICO

For Canadian Professor Luc B. Tremblay, the concept of “the rule of law” means that the government must decide and act rationally, and since the law is defined as “[r]eason free from all passion,” then governmental decisions must be, in a sense, legal.¹³⁶

For U.S. Fulbright Scholar Michael C. Taylor, the “rule of law” (*Estado de derecho*) is the “constructive interaction of institutional and cultural factors characterized by lawfulness on the part of both a nation’s government and its citizens.” After conducting legal research in Mexico for a couple of years, Taylor concluded,

their academic platforms, ride on the wagon of the need for change in Mexico without producing it in the end. Instead, they generate cosmetic reforms; an illustrative example is the establishment of the National Human Rights Commission. *See id.*

135. See William Ratliff & Edgardo Buscaglia, *Judicial Reform: The Neglected Priority in Latin America*, 550 ANNALS AM. ACAD. POL. & SOC. SCI. 59, 65 (1997).

136. LUC B. TREMBLAY, THE RULE OF LAW, JUSTICE, AND INTERPRETATION 32 (1997).

The news of lawlessness from Mexico crosses the border quickly.

....

Behind the headlines from Mexico lies a deep problem. It reaches far into the Mexican heart of darkness, further than the sensational stories would suggest; it affects the life of every Mexican citizen, every day. There is no rule of law in Mexico.¹³⁷

Pilar Domingo, on the other hand, asserts,

We may question whether rule of law can be said to exist in the absence of satisfactory democratic mechanisms. Mexico, despite the considerable procedural advances in the direction of a more competitive democratic polity, still falls considerably short of deserving the democratic label. Does it make sense, therefore, to even consider the possibility of rule of law mechanisms, in the strict sense of the term in this context. [sic] It might be more adequate to speak of a state of legality, in the degree to which citizenship and the corresponding rights are or are not advanced. The question is, then, to what extent are we witnessing in Mexico a development from a state of legality of sorts to full rule of law.¹³⁸

More moderately, Mexican Supreme Court Justice Genaro David Góngora Pimentel indicates that the expression “rule of law” (*estado de derecho*) implies “that the whole State sphere is presided over by legal norms, and that the power of the State and its activities are conducted subject to legal prescriptions.”¹³⁹ He asserts that the rule of law in Mexico is “not perfect,” and further recognizes that essential requirements, like the establishment of a true constitutional democracy and a clear system of protection for individual, social, and political rights, are necessary “to make the rule of law a reality in Mexico.”¹⁴⁰

Evidently, in order to secure the empire of the rule of law, a genuine and efficient system of administration of justice is

137. Taylor, *supra* note 99, at 141.

138. PILAR DOMINGO, RULE OF LAW, CITIZENSHIP AND ACCESS TO JUSTICE IN MEXICO 4 (Documentos de Trabajo, Centro de Investigación y Docencia Económicas, 1996) (footnotes omitted).

139. David Góngora Pimentel, *El Estado de Derecho en México*, LEX, Sept. 1996, at 6–7.

140. *Id.*

a *sine qua non* condition. Private individuals and government officials must realize that contravening the law would inevitably lead to the application of the corresponding sanctions. Those empowered to bring charges against offenders must be able to do so free from any political pressure or interference, and those entrusted with the administration of justice must independently judge the merits of each case with a fair trial that observes the basic requirements of due process. All of the above conditions must occur before there is a reasonable chance for the prevalence of the rule of law in Mexico.¹⁴¹ If those fundamental expectations were available to the Mexican citizen, particularly when it is the government who contravenes the legal order, then the possibilities for the rule of law in Mexico would dramatically increase. The fact that those conditions are generally absent in Mexico accounts for the current situation in the country.

An inventory of features that precludes the success of the rule of law in Mexico would include the following:¹⁴²

- a) The deceit of the *amparo* jurisdictional procedure as a tool to safeguard and legitimize authoritarianism, which is incomprehensibly defended by the legal community as a national pride.¹⁴³ The incredibly limited opportunities for citizens to access the courts to challenge the constitutionality and legality of all types of governmental actions (administrative, legislative, or judicial), particularly with the *amparo* judicial review remedy, render them largely useless. Taylor in fact goes to the heart of the problem by identifying, as a key reason for the weakness in the administration of justice in Mexico, the legal limitations on the effectiveness of the *amparo* suit.¹⁴⁴ Those limitations in the *amparo* procedure¹⁴⁵ are the following:

141. See JOSÉ OVALLE FAVELA, GARANTÍAS CONSTITUCIONALES DEL PROCESO 294–300 (1996).

142. Some of these features are also present in other Latin American countries. See Ratliff & Buscaglia, *supra* note 135, at 65.

143. See *Suprema Corte*, *supra* note 127, at 61.

144. See Taylor, *supra* note 99, at 151–57.

145. For an understanding of the *amparo* procedure in English scholarly literature, see generally RICHARD D. BAKER, JUDICIAL REVIEW IN MEXICO: A STUDY OF THE AMPARO SUIT (1971); see also ZAMORA & LÓPEZ, *supra* note 99.

- i) The judgment resolves only the case at hand and neither sets a precedent nor affects other similar cases or potential parties.¹⁴⁶ Thus, if the judgment declares the challenged governmental action to be unconstitutional or illegal, that governmental action will not be applicable to the plaintiff, who becomes protected from it by the federal justice. However, that unconstitutional or illegal action remains formally and materially valid and fully in force *erga omnes*, thus creating a parallel legal order (an exceptional one for those prevailing in an *amparo* procedure and the general one that, despite its unconstitutionality or illegality, must be observed by everyone else), which is clearly contrary to the constitutional principle of equality before the law;¹⁴⁷
- ii) To have access to the *amparo* remedy, the plaintiff must overcome the very difficult and tricky test of proving that he or she has legal standing (*interés jurídico*).¹⁴⁸ The plaintiff can establish standing and have his or her day in court only by submitting fully convincing evidence that the challenged governmental action has had a very direct personal prejudicial effect (*agravio directo y personal*) over his or her person or patrimony in contravention of a personal right explicitly recognized by law. The decision to allow the suit is within the court's entire discretion.¹⁴⁹ Therefore, if the plaintiff is affected as a member of a group or community or if the governmental action affects the public interest and not the very individualized interest of the plaintiff, then the suit does not even pass the desk of the court's clerk. The procedural lack of legal standing is one of the most prevalent reasons for most of the *amparo* suits being thrown out of court.¹⁵⁰ Supreme Court Justice Góngora Pimentel has proposed the recognition of legal standing to nongovernmental

146. See Taylor, *supra* note 99, at 151.

147. See *id.* at 156.

148. See Fix-Fierro, *supra* note 105, at 70.

149. See BAKER, *supra* note 145, at 92–97.

150. See Taylor, *supra* note 99, at 155.

organizations to institute *amparo* proceedings for the defense of group or collective interests.¹⁵¹ On the other hand, Supreme Court Justice Juventino Castro y Castro has proposed a sort of class *amparo* action.¹⁵² Others have demanded that the existing *amparo* be made more accessible to everyone and that the effects of the decisions be extended *erga omnes*. This proposal is endorsed by Sergio García Ramírez,¹⁵³ which implies that the so-called “Otero formula” in Article 107/II of the Constitution¹⁵⁴ should finally be amended;

- iii) The large, cumbersome, and difficult procedural hurdles and requirements turn this remedy into a true procedural trap that makes it difficult, slow, and costly to exercise. Lack of legal standing and improper procedure are the reasons why as many as seventy-seven percent of *amparo* cases are thrown out of court (only eleven percent of those admitted to court are successful), which conveniently helps to reduce the court’s usually excessive caseload;¹⁵⁵
- iv) The *amparo* remedy is only available against governmental actions that have not produced all their practical effects and can still be undone, which leaves consummated actions totally immune despite their unconstitutionality or illegality;¹⁵⁶
- v) To have the *amparo* procedure available as an option, all other available legal remedies, administrative or judicial, have to be previously exhausted, except if there is a direct and unquestionable violation of a constitutional

151. See Enviado Francisco Reynoso, *La violencia no es camino para el cambio, senala el ministro David Góngora Pimentel*, EL NACIONAL, Sept., 21, 1996, available in LEXIS, Mexico Library, Allnws File.

152. See Jesús Aranda, *Propone ministro crear la figura de “acción social de amparo,”* LA JORNADA, Nov. 25, 1997, at 40.

153. See Ramírez, *supra* note 52, at 15; Alma Muñoz, et al., *Hacer el juicio de amparo más accesible, pide Mireille Roccatti*, LA JORNADA, Nov. 9, 1997, at 51.

154. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] art. 107, pt II.

155. See Taylor, *supra* note 99, at 155.

156. See *id.* at 157.

guarantee.¹⁵⁷ Exhausting those legal remedies is usually another cumbersome proposition, where legal standing and excessive procedural requirements also turn them into traps that are difficult to overcome. First, “administrative” procedures must be instituted to get a review (*revisión*) from the official hierarchy above the author of the action to be challenged.¹⁵⁸ Then, worst of all, in local and federal fiscal cases there are remedies to exhaust in the above mentioned parallel “specialized courts” that belong to the executive branch instead of the judicial branch (*tribunales contenciosos administrativos*), and which are empowered to render nullity judgments.¹⁵⁹ Calls have been made for these tribunals to be returned to the judicial branch because some analysts see the specialty courts as a political attempt by the executive branch to maintain control;¹⁶⁰

- vi) The *amparo* procedure is unavailable to question the justifiability of so-called “political matters,” including the political rights constitutionally recognized for all Mexican citizens, and consequently, vital questions such as electoral matters are not subject to this judicial review;¹⁶¹ and
- vii) In the end, as has been stated before, the *amparo* suit has lasted so long because it has done so little and, it should be added, because it is so relatively harmless to the Mexican government.¹⁶²

- b) Valid unconstitutional legislation: Thanks to the above-mentioned 1994 constitutional reform, *acciones de inconstitucionalidad* became available through Article 105 of the Constitution.¹⁶³ However,

157. See BAKER, *supra* note 145, at 99.

158. See *id.* (noting that administrative action is a precondition to a successful *amparo* challenge).

159. See VÁZQUEZ ALFARO, *supra* note 99, at 263.

160. See Taylor, *supra* note 99, at 164.

161. See Oropeza, *supra* note 19, at 18, 22.

162. See Taylor, *supra* note 99, at 157.

163. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] art. 105.

it is exclusively available to the Attorney General, to thirty-three percent of the members of either house of Congress, or to thirty-three percent of the state legislatures. Only through these avenues can a request be made to the Supreme Court to strike down unconstitutional legislation through a declaration of invalidity.¹⁶⁴

- c) Parallel executive courts: Because of the restrictions in the exercise of these actions and given the deficiencies, limited value, and in effectiveness of the *amparo* suit, a vast majority of the illegal and unconstitutional legislative and administrative actions remain valid and unchallenged. Contributing to this worrisome result is the removal of a large amount of justifiable matters from the judicial branch through the creation of the above mentioned so-called “administrative tribunals” under the executive branch.¹⁶⁵
- d) The much feared *Ministerio Público*:
 - i) One of the key actors in the administration of justice in Mexico, which is at the same time one of the main reasons for its failings, is the *Ministerio Público* (Public Prosecutor). He is an agent of the Attorney General’s Prosecuting Office. As Miguel Sarre has put it, the office constitutes a vestige of the inquisitorial mentality of previous centuries and is at the same time “judge and party” in the criminal procedure.¹⁶⁶ It is a sort of “judging police” that undertakes an “administrative inquiry” (*averiguación previa*) and then admits, rejects, and even evaluates all the evidence before the matter reaches the desk of the judicial authority, the real judge.¹⁶⁷ The public prosecutor often preventively holds (*detención preventiva*) the potentially accused in its own prison cells (*separos*), that is, even before the prosecutor is convinced that such person may have been

164. See Taylor, *supra* note 99, at 151.

165. See *id.* at 164.

166. MIGUEL SARRE, LA AVERIGUACIÓN PREVIA ADMINISTRATIVA: UN OBSTÁCULO PARA LA MODERNIZACIÓN DEL PROCEDIMIENTO PENAL (Cuadernos de Trabajo, Academia Mexicana de Derechos Humanos, 1997).

167. *Id.*

involved in the commission of a crime. Manuel González Oropeza, referring to dictator Porfirio Díaz, has indicated,

It was Díaz who, on 22 May 1900, decided to absorb the prosecution of justice within the Executive Branch, creating a special department under the title of Office of the Attorney General. . . .

This Office . . . slowly but surely took over the powers of the judiciary, to the point that doctrine now recognizes that criminal justice is in its hands. Criminal justice is the Achilles heel of all human rights demands and the best position to evaluate the quality of the implementation of justice and its failings.¹⁶⁸

Sergio García Ramírez has added, “The Ministerio Público is undergoing a very intense crisis of its own. . . . [T]he origin can probably be traced to the moment this federal institution neglected its constitutional and legal task and carried out inexcusable abuses upon the citizens.”¹⁶⁹

- ii) Thus, the inquiry is intended to justify the rather illegal deprivation of freedom *a posteriori*. Instead of being an essentially administrative authority that is supposed to participate in the criminal procedure as a so-called representative of society (for the people), the public prosecutor has become the typical torturer and social enemy because of its abuses, corruption, arbitrariness, and amazingly low professional quality. It exercises a total monopoly over the power to bring criminal charges (*monopolio de la acción penal*).¹⁷⁰ This is all worsened by the crimes of

168. Oropeza, *supra* note 19, at 16.

169. Ramírez, *supra* note 52, at 13.

170. See Gustavo Castillo García, *Sienta bases la Corte para regular la actuación del Ministerio Público*, LA JORNADA, Oct. 23, 1997, at 51; Gustavo Castillo García, *Se requieren reformas para dar autonomía al Ministerio Público*, LA JORNADA, Nov. 24, 1997, at 14; Andrea Becerril & Elizabeth Velasco, *Aprobó*

the much feared “judicial police,” which is supposed to operate under the prosecutor¹⁷¹ and through whose actions as indicated by Manuel González Oropeza, “the entire machinery of justice is brought to a halt and great abuses are committed.”¹⁷²

- iii) As an employee of the executive branch, the *Ministerio Público* almost invariably follows the political dictates of his bosses when prosecuting, following the so-called principle of political opportunity rather than the principle of legality, thus perverting the whole system of the administration of justice. Proposals have been made to remove these officials from the executive branch and have them appointed by Congress or to relocate them within the judicial branch,¹⁷³ re-establishing the Justice Department that disappeared at the beginning of this century to make way for the Attorney General’s Office and its *Ministerios Públicos*;¹⁷⁴ and
- iv) Sarre hopes that “with the transformation Mexico is currently experiencing, an authentic re-conversion takes places in our criminal justice system which, by transferring the powers and functions of the *Ministerio Público* to the jurisdictional authorities, will vindicate the rights of Mexicans to something as simple and as complex as the right to be judged by judges.”¹⁷⁵
- e) The reign of crime, impunity and insecurity: According to Professor Rafael Ruíz Harrel and in accordance with official data, the reign of crime in Mexico City, where about a quarter of the country’s population lives, can be summarized as follows:

el Senado la creación del Instituto Federal de Defensoría Pública, LA JORNADA, Nov. 19, 1997, at 6.

171. See Alejandra Gudiño Ramírez, *35% de las quejas en la CDHEM son contra la Procuraduría*, LA JORNADA, Nov. 19, 1997, at 71; José Galán, *NYT: ante los comicios del 2000, Del Villar encara presiones para demostrar progresos en la procuración de justicia*, LA JORNADA, Aug. 7, 1998, at 59.

172. Oropeza, *supra* note 19, at 21.

173. See *id.* at 21.

174. See *id.*

175. Sarre, *supra* note 166, at 15.

- i) Crime increased practically three-fold from 1980 to 1997 (from 1,173 to 2,969 crimes for every 100,000 people), a situation Harrel believes was created not only by the deteriorating socio-economic situation, but also largely by the ineptitude of those who govern, particularly the inefficiency of the *Ministerio Público* and the corruption, inefficiency, laziness, and irresponsibility of the police;¹⁷⁶
- ii) Despite the fact that Mexico City has more policemen per head than any other large city worldwide (65 for every 10,000 people, compared with 25 in London and 40 in Rio de Janeiro), the lack of security in Mexico City has reached such alarming proportions that in a 1997 poll published by the newspaper *Reforma*, 67.4% of the respondents claimed that they or a member of their family had been victims of a crime;¹⁷⁷
- iii) 47.3% of those victims were women, which contrasts with the world average of between 16% and 20%;¹⁷⁸
- iv) About 85.9% of those polled thought the police were accomplices of the criminals, and on a scale from 1 to 10, they rated their trust in the police at 3.6;¹⁷⁹
- v) Thus, a full 82.1% of those victims did not bother to even denounce the crimes to the authorities;¹⁸⁰
- vi) Of all crimes committed in Mexico City in 1995 (about 630,000), only 36% (218,599) were reported to the authorities. However, only 2.5% (5,479) of them reached the courts, which means there is a 97.5% level of impunity for reported crimes and a 99% level for crimes overall (compared to 84% in Rio de Janeiro and 69% in London). Those cases reaching the courts lead to guilty verdicts in seven of every eight cases

176. See RAFAEL RUIZ HARRELL, *CRIMINALIDAD Y MAL GOBIERNO* 57 (1998).

177. See *id.* at 53.

178. See *id.* at 54.

179. See *id.* at 54–55.

180. See *id.* at 55.

according to the "Citizens Workshop for Legislative Proposals," a Mexican group of experts that has analyzed the irrelevance of the new package of legislative initiatives sent by President Zedillo to Congress in December of 1997;¹⁸¹

- vii) Crime in Mexico City grew between 1993 and 1997. It increased 63% for assault to pedestrians, 208% for car theft, 457% for robberies in public transportation vehicles, and 158% for theft with violence;¹⁸² and
 - viii) In just the first 7 months of 1998, an average of 446 crimes were reported daily, and 1,313 complaints were filed at the local Human Rights Commission.¹⁸³
- f) Taylor has identified other generalized causes for the current situation of the rule of law and the administration of justice in Mexico that should be a part of this inventory:
- i) The restrictions built into the law for the creation of jurisprudence:

The Supreme Court creates precedent, or *stare decisis*, when it consecutively decides five similar cases in the same way, voting with a super-majority (eight of the eleven) of the ministers. In developing these rules of jurisprudence, nineteenth-century Mexican legislators attempted to emulate the United States system of judicial interpretation, as described by Alexis de Tocqueville. The original creators of the *amparo* suit in

181. See *Las Reformas Constitucionales en Materia Penal, Irrelevantes para el Restablecimiento de la Seguridad Pública*, TALLER CUIDADANO DE PROPUESTA LEGISLATIVA (Mexico, 1998); see also *Se ha logrado 95% de sentencias condenatorias en un mes: PGR*, LA JORNADA, Nov. 24, 1997, at 58.

182. See Humberto Ortiz Moreno, *El DF, sin un marco institucional de justicia contra la impunidad*, LA JORNADA, Dec. 19, 1997, at 50; César Martínez, *Creció 10.4% el robo de carros este año, dicen aseguradores*, LA JORNADA, Dec. 2, 1997, at 20 (stating that car theft in Mexico increased 10.4% during 1997); Gustavo Castillo García, *625 mdd, la ganancia anual por el robo y tráfico de vehículos*, LA JORNADA, Nov. 19, 1997, at 57.

183. See Raúl Llanos Samaniego, *De enero a julio, 446 delitos diarios: informe sobre procuración de justicia*, LA JORNADA, Aug. 11, 1998, at 44.

Mexico made explicit reference in 1841 to de Tocqueville's description as a justification for the *amparo* suit. A few years later, the framers of Mexico's Constitution of 1857 expressly intended to adopt the United States system of judicial review as described by de Tocqueville. When Mexico's constitutional designers attempted to rigidly follow de Tocqueville's description, however, they created a weak institution of jurisprudence which bears little resemblance to the United States model;¹⁸⁴

ii) The quality and prestige of judges:

In terms of prestige judges in Mexico simply do not enjoy the same cultural respect or undergo the same extensive professional preparation as judges do in common law countries . . . Mediocre students and those from lower classes with socioeconomic ambitions tend to fill the ranks of judges. . . .

Additionally, Supreme Court ministers are traditionally politicians who for one reason or another must be removed from the political fray. The implication of this practice of appointment is that while many ministers of the Supreme Court are qualified only by their obsequiousness to the President, a good number can be downright corrupt;¹⁸⁵

and

iii) The lack of enforcement powers of the judicial branch:

[T]he executive branch is charged with enforcing all judicial decisions. All jails, all sentencing, all policing, and all methods of enforcing justice are under

184. Taylor, *supra* note 99, at 157–58 (footnotes omitted).

185. *Id.* at 165 (footnotes omitted).

the executive branch which should in theory “execute” the wishes of the courts. In practice, however, many *amparo* suits and ordinary court resolutions go unenforced. Not coincidentally, impunity is most evident in those cases which inconvenience the executive branch . . . The Supreme Court does not have the power to enforce its own decisions even when it finds the government has violated the constitution.¹⁸⁶

- g) Manuel González Oropeza adds the following common causes:
- i) The existence of the judicial police, which should be dismantled and reorganized;
 - ii) The extortion by the judicial police of persons with a criminal record, including those who have been absolved by a court;
 - iii) The implementation of only twenty percent of the judicial orders of arrest;
 - iv) The fact that victims of a crime do not participate in the trial;
 - v) The lack of enforcement of legal provisions protecting pregnant women and the elderly in criminal procedures;
 - vi) The manipulation of the judicial system for minors;
 - vii) The extortion of low level officials by their corrupt superiors;
 - viii) The duplication of control mechanisms and offices, which hinder the correct development of police forces;
 - ix) The lack of legal regulation of the freedom of information over matters that allow the public to examine official procedures; and
 - x) The failure to provide sufficient resources to the judiciary, which receives 0.1% of the national

186. *Id.* at 164 (footnotes omitted).

budget in contrast with 1% for Congress and more than 95% for the executive branch.¹⁸⁷

- h) Pilar Domingo contributes by identifying the following generalized causes:
- i) High levels of politicization, clientelism, and corruption characterize the justice system;
 - ii) There is a pattern of arbitrary detention and disappearances;
 - iii) The environment of the Mexican political system is hardly propitious for judicial independence; and
 - iv) On the whole, conditions for fair and equitable access to justice and human rights protections in Mexico are dire, and the reforms of the 1980s and 1990s have done little to address these problems.¹⁸⁸
- i) A rather moderate team of legal experts has concluded in one of the studies published on the subject,

In our country, the legal order and justice suffer grave problems. To start with, we can assert there is a lack of a body of legal principles that is clear and respected by everyone. Much to the contrary, the rules are generally disobeyed both by authorities and by private citizens, which results in there being no certainty in social relations.

The laws, which govern Mexican society, are in some cases contradictory and in others obsolete. The citizens do not have efficient defense remedies, or remedies that are economically accessible to all. Disputes among individuals are solved, in general, outside of the law and, if they are taken to court, it is often necessary to fight the decision, because of its poor quality, at a second or third appellate level. The Executive branch exercises improper and excessive influence over the administration of justice and over the Judiciary in general.

187. See Oropeza, *supra* note 19, at 21–22.

188. See DOMINGO, *supra* note 138, at 14–15, 18, 22.

The Supreme Court has not been able to fully perform its function in the scheme of division of powers, that is, the function of controlling the constitutionality and legality of the acts of the other powers.

The deficiencies in our legal system are evident starting with the Constitution itself, which is the Supreme Law which governs the Mexican State, and passing through the most simple mercantile contracts between individuals, and laws and regulations which are often mutually contradictory.

We have a Constitution which is more a listing of intentions than a regime that governs society and the State. Due to this, there exists a notable divergence between the formal constitutional rules and the practice of authorities; between the formal federal system and the reality of centralism; or between the formal division of powers and the reality of a hegemonic Executive which legislates and judges as a quasi-functional power. . . .

The Mexican Constitution, in force since 1917, has been amended 350 times, to serve the political convenience of the moment and the aspirations of the various power groups.¹⁸⁹

There are two ways to conceive the problem of the rule of law in Mexico. On the one hand, we can see extraordinary changes in the Mexican economy, and at the same time, the legal framework is insufficient and inadequate for the country to successfully compete in the world.

IX. CONCLUSION

In the midst of such legal realities, go ahead and try as a concerned citizen of Mexico to challenge and stop the construction of a large tourist development project in a coastal area that is also the habitat of an endangered species of flora and fauna protected by the law. Try to stop the dumping of nuclear or hazardous wastes in a site located on

189. See Fix-Fierro, *supra* note 105, at 25–26.

top of aquifers and near a rural community. Try to stop a highly-polluting industrial project in a zone where the permitted land use is "ecological preservation" and where the land serves as a recharge area for the water supply of a neighboring town.

Try to ensure compliance by a powerful and influential entrepreneur who belongs to or supports the political or financial establishment. Try to make the Mexican government enforce environmental legislation in one of the many projected activities that will cancel the availability and enjoyment, for present and future generations of Mexicans, of the already scarce natural resources. These projects involve the commission of crimes typified in existing laws, often with the tolerance or negligence of competent authorities.

Finally, try in the current situation of the rule of law in Mexico and as a well meaning environmental authority to overcome the hard political resistance of the trade bureaucracy. The trade bureaucracy is supported at the highest levels of government. Try to secure the badly needed implementation of legally-mandated environmental modalities and restrictions on the exploitation of resources, the production of goods, or the rendering of services, which are alleged to keep the country competitive in international trade.

Unfortunately, for the reasons explained in Section V of this Article and because the international community follows with great concern the developments in Mexico, which often make the most negative headlines, it is possible today to assert that the question of lawlessness in Mexico is becoming dangerously internationalized. Within this context, it can be asserted that lawlessness in Mexico and the lack of political will on the part of the political system to reinstate the rule of law and to reform the administration of justice have in fact become a self-generated national security threat to the country.

Consequently, it is the strong opinion of this author that all those Mexicans who have traditionally concerned themselves with preserving the national sovereignty from foreign interference in matters that are as a matter of principle of the exclusive incumbency of Mexico should thus be at the very forefront of the struggle to return the country to the rule of law. They need to work harder in helping the country complete its transition to democracy to prevent pressures from abroad, instead of pretending, as is often the case, that the international community has no reason for

concern. Only in that way will Mexico occupy its rightful place in the world.

Therefore, those in charge of foreign policy should place themselves in the vanguard of generating the necessary domestic changes with the required urgency, instead of concealing the truth to represent a simulated country that simply does not exist in reality.