UNITED MEXICAN STATES

Manuel González Oropeza

The current and most pressing problem in the Mexican federal system is how to organize the distribution of powers. Since 1847 Mexico has had a type of distribution of powers in which the federal government may only exercise those powers granted *expressly* in the Constitution; no other country in North America has this type of rigid distribution. Not even Canada (which has a dual catalogue of powers granted to both federal and provincial governments) or the United States (with the all-encompassing "necessary and proper clause") are the same as Mexico in this respect. In those countries judicial interpretation has played a major role in extending the limited powers assigned to either sphere of government, whereas in Mexico most of this extension has been achieved through constitutional amendment alone.

All political actors in Mexico today agree that the existing distribution fails to contribute to the democratization and political growth of the country, but none of them has suggested realistic reforms. Because Article 124 of the Constitution forces an explicit grant of power to the federal government, most of the reforms suggested fall into one of two categories. They would either (1) eliminate from the explicit catalogue of Article 73 crucial powers for the federal government and transfer them to the states or (2) suggest a Canadian type of system, where the states would have an explicit catalogue of reserved powers granted in the Constitution, along with those already established for the federal sphere. These two options are extreme with regard to the Mexican situation and would require extensive constitutional amendments.

In the past, constitutional amendments were easy for the president of Mexico. However, since 2001, when the latest constitutional reform recognizing indigenous rights was ratified, the amending process for any constitutional change has become very difficult as political control is now divided among three major political parties and at least four other minor parties at the federal level.

Reform is particularly difficult to achieve because, in Mexico, all matters concerning the distribution of powers become a constitutional issue. These issues have not traditionally been subject to judicial interpretation (as they are in Canada and the United States) or to statutory regulation. The only source of legal authority is the written Constitution, and it leaves little space for judicial interpretation. In fact, Article 72, Section f, of the Constitution reads that in the *interpretation*, repeal, or change of any law, the amendment procedure must follow the same process as was followed when the provision was originally adopted. Thus, even though the judicial branch is authorized to exercise a *juridical* interpretation under Article 14 of the Constitution, this interpretation is submitted to the final authority of the legislature. Some are of the view that the Supreme Court is the final interpreter of the Constitution under Article 94, Paragraph 8, but again, this power is to be exercised in deference to the legislature. So judicial interpretation is not free spirited and independent but, rather, highly scrutinized and limited. Therefore the judicial interpretation process, being different from the legislative process, cannot effectively change any constitutional provision regarding distribution of powers.

This chapter discusses this dilemma and provides a glimpse of a possible solution. But first, we must review some general information on Mexico.

THE FEDERAL CONSTITUTION IN HISTORICAL CONTEXT

General Background

Mexico's population in the 2000 census was 100,349,800 inhabitants, making the country the eleventh most populated in the world and, after the United States, the second most populated in North America. The big increase in population came during the twentieth century: a population of 14.5 million in 1917 expanded to a projected population of around 107 million in 2005.[i] The annual population growth rate is considered to be 1.5 percent.[ii] Mexico's continental territory is 1,964,381.7 square kilometres, or more than 756,066 square miles, and the islands constitute an additional 5,133.4 square kilometres. Its border with the Unites States in the north is 3,152 kilometres long, and that with Guatemala and Belize in the south is 1,149 kilometres long.

The predominant language, although not legally official, is Spanish. From 8 percent to 10 percent of the population are monolingual in one of the Aboriginal languages. Among the fifty-eight Aboriginal languages the largest are Nahuatl,[iii] Mayan, and Zapotec.[iv] The official statistics of Mexico do not classify population distribution according to race because such classifications were abolished at Independence. Nevertheless, it is possible to assert that the majority of the Mexican population consists of the product of *mestizaje* between the Spaniards and the indigenous people, accounting for roughly 90 percent of the population.[v]

Of the total population 96 percent is Roman Catholic while 1.2 percent is Protestant, 0.1 percent is Jewish, and 2.1 percent is other. Freedom of religion was first established through a constitutional amendment in 1873. By law, all churches are named as "Religious Associations" and must be registered with the federal government. States neither regulate nor enforce federal religion-related laws.

Mexico's GDP is US$6,030 per capita, the second largest Latin American GDP per capita after Argentina. Mexico has achieved the largest growing economy in Latin America and, since 2001, it has risen to US$617.8 billion per year.[vi]

Constitutional Evolution

The current Constitution originated from a revision of the previous 1857 Constitution, which had reestablished the federal system. The first federal Constitution was actually enacted before that, in 1824, but internal crisis produced its replacement in 1836. The current Constitution was enacted on 5 February 1917 by a special constitutional convention called the year before and assembled in the City of Queretaro in central Mexico amid the struggles among the different supporting groups of the Mexican Revolution. The Constitution was a self-implementing document because most of the state legislatures had been dissolved by internal divisions during the more than six years of the revolutionary war. Consequently, the federal Constitution was not ratified by the states forming the union and no requirement for this was ever advanced.

The adoption of the republican form of government led to the federal system. The constitutional convention that approved the 1917 Constitution, led by a few lawyers and other professionals, consisted of a popular body of representatives who changed the constitutional draft of the then incumbent head of the executive branch, Venustiano Carranza. With complete freedom these representatives debated the main institutions to be included in the resulting constitution, including social rights and land reform. The very first debate considered the official name of the country. During most of the nineteenth century, during federalist times, its official name had been the United Mexican States; however, in the twentieth century it was deemed

appropriate to consider changing the name to the Republic of Mexico. This issue aroused extensive debate as to whether the title of "Republic" was sufficient to show that the country was inspired by the federalist spirit. In the end, the opposing view prevailed and the official name of the country remains the United Mexican States.

The current Constitution followed the Reformation Act, 1874, in establishing judicial review, but the main institutions (including judicial review) are embedded within civil law. At first, the writ of *amparo* (shelter) was the remedy to protect human rights established in the Constitution and was the only judicial review procedure foreseen and intended for individuals. However, judicial review on the basis of amparo was very severely restricted by legislation. Impeachment was the procedure by which the legislatures were empowered to protect the Constitution from general violations.

Limitations on judicial discretion and the prevalence of legislative processes are major features of the Mexican system. Neither judicial precedents nor broad judicial interpretations are permitted -indeed they are constitutionally prohibited by Articles 14 and 92 of the Constitution. Thus the precedent value in judicial review for today's court resolutions are relative only to the courts from which they originate. In other words, Mexico does not have a stare decisis doctrine, and the judicial resolutions issued by the highest federal courts are binding upon others state and federal courts only when they are approved with a special majority of judges and their holdings are constant in five consecutive resolutions. No other authority is compelled to follow their rationale. Where judicial resolutions occur as a last resort, their binding force is embedded in the concept of "jurisprudencia" (i.e., they are binding only upon the judges, not upon all authorities). And so, in the area of the federal distribution of powers, judicial interpretation has made no major discoveries relating to the stipulated powers granted by the Constitution to the federal government. Every new subject is dealt with through the constitutional amending process so as to be in accordance with Article 124, which establishes that all federal powers have to be expressed exclusively in the text of the Constitution.

Concerning the other branches of government, the executive is the only branch to be vested in a single authority (as in the United States). Mexico had the chance to vest this authority in the hands of a "collective" executive, as in the French Constitutions of 1795 and 1799, respectively. However, the decision to adopt a single executive was finally made in the 1824 Constitution on the basis that the federal system, along with the separation of powers, would be effective enough to constrain any abuse of power. However – and significantly - the Constitution does limit many executive positions, including the that of the president, to a single term in office.

In the same fashion, the federal legislative branch was originally deposited in two houses, the first devoted to popular representation and the second devoted to counterbalancing the overrepresentation of big states in the first. The Senate was created in order to achieve a balanced and equitable representation of the states rather than of the people. Some state legislatures established a second chamber, but these were all abolished by the end of the nineteenth century. Since 1977 Mexico has adopted proportional representation for election to all representative bodies (federal Congress, state legislatures, and municipal bodies). There are 500 federal representatives in the lower house, 300 as the result of direct election (since 1917) and 200 as representatives of five multiple-member constituencies. There are 128 members of the Senate, and they are elected through a combination of direct suffrage (three seats per state for a total of ninety-six) and proportional representation on a national basis (for thirty-two additional seats). So we can see that the federal system was fundamental to the structure of the various branches of government.

A long process of decentralization was involved in the creation of the federal system in Mexico. During colonial times, whenever it was feasible throughout the immense territory of New Spain (as Mexico was then called) centralization was a key tendency in government. The last part of that period coincided with the enactment of the 1812 Cádiz Constitution in Spain. This first Spanish Constitution allowed the existence of "Provincial Deputations" as autonomous governing bodies for each of the provinces. These deputations were politically active in the formation of the federal system in Mexico in 1824, once independence was achieved. However, since its creation, many politically influential sectors of the population have argued that the federal system does not fit Mexico's geographical and societal conditions. The prevailing system of centralized rule in Spanish America and the lack of definition in existing federations, mainly the United States, made it very difficult to change 300 years of tradition.

The 1917 Constitution involved a reform of the 1857 Constitution. However, the basic system of the distribution of powers dates back even earlier, to the Reformation Act, 1874. In the 1824 Constitution the allocation of powers was considered to involve a partnership between the "general" government and the state governments, who were expected to work with the same powers in a coordinated manner. However, when there were clashes between federal and state laws, the states would not agree to the nullification of their laws as decreed by the general Congress. The Reformation Act sought to solve this conflict by clearly stating the federal powers and excluding any state legislation from affecting any matters expressly granted to the federal government. In its way this was similar to the pre-1787 United States Articles of Confederation (Article 2), based on the principle that federal authorities shall perform only those powers granted expressly by the states in the Constitution.[vii] In the same fashion, the undesignated reserved powers of the states are exclusive to them, are coordinate (or equal) to federal powers, and cannot be trampled by the federal government.

Article 124 of the current (1917) Constitution thus sets out the distribution of powers, resembling the original U.S. Articles of Confederation. As noted above, Article 124 sets out that every time a "new" competence is advised for the federal government, a constitutional amendment is required, notwithstanding the fact that Mexico does have a "necessary" clause in Article 73, Section XXX, of the Constitution. However, in order to have effect, this clause requires judicial interpretation which, as noted, is not in principle a prerogative of the judiciary. Exercising self-restraint, the Supreme Court has only interpreted the necessary clause once, in 1932. At that time it found that archeological monuments are a federal concern and therefore exclusive to federal legislation. This ruling struck down the state legislation in Oaxaca, despite the fact that the Constitution gave the federal government no power to do so. However, the value of this precedent is relative because, after the ruling, a constitutional amendment was approved to have the subject of archeological monuments explicitly written into the Constitution.

One may now move on to other significant trends in the evolution of the distribution of powers. During the administration of Porfirio Diaz, which began in 1910, a set of reforms was proposed (similar to an earlier reform proposal in 1883 dealing with commerce) to increase the limited and stipulated powers of the federal government. The 1917 Constitution followed the trend of the previous Constitution and the never-ending addition to new powers for the federal government grew in a disproportionate manner.

However, the main concern of the new Constitution focused, for the first time, on "social rights," the rights of communities and "minorities" who had been traditionally exploited (particularly peasants and workers). In this respect, the federal Constitution established the framework for all authorities, both federal and state, to act on behalf of these social groups and to

guarantee their constitutional rights. The original intent of the new Constitution was to involve both levels of government in the administration of the "new justice" - an administrative justice that would not depend on the courts, who had been the allies of the Diaz administration. The new "administrative" justice would be integrated with the social sector. For instance, labour courts were established at both the federal and state levels, and they enforced both federal and state statutes until 1929. These were implemented by a "panel" of three judges, one appointed by the executive, one by the labour unions, and one by the corporations. In land reform, adjudication went in the first instance to state commissions and then, for final resolution, to the Federal Commission on Land Reform. Notwithstanding this initial arrangement, later reforms tended to centralize procedures and regulations so that federal agencies superseded state agencies.

This model for administrative justice had been reversed in some ways at the end of the twentieth century in view of the general lack of public confidence in the independence of the courts, which were seen as being controlled by the executive. Particularly important has been the transfer of electoral courts from the executive realm to the judicial realm. Labour and land reform courts are still under the influence and control of executives at both federal and state levels.

Intellectual and International Influences on the Federal Constitution

The core of the 1917 Constitution remains the same as that of the 1857 Constitution, which was influenced by the U.S. Constitution (and commentaries on the latter from such mid-nineteenth-century French writers as Alexis de Tocqueville and, later, Edouard Laboulaye). In the 1870s commentaries on the U.S. Constitution by writers such as Joseph Story, James Kent, George Paschal, and Thomas Cooley were also available in Mexico. However, during the constitutional convention that enacted the 1917 Constitution, the most influential author was Mexican jurist Emilio Rabasa, who had expounded on the U.S. Constitution.

The founding fathers were all inspired by the social issues that inspired the Mexican Revolution; that is, in the main, their inspiration was Mexican. The separation of church and state had been formally achieved, but shortly after the enactment of the Constitution, Mexico became involved in a religious civil war that began in 1925 and lasted several years. The civil war had no obvious impact on the Constitution. Indeed, the Mexican Constitution, being the first to set out social rights, served as a model for the Weimer Constitution (1919) and the Russian Constitution (1918) for social rights.[viii]

The Constitution was formed with the idea that the federal government must assume a role as the driving force behind all the social changes needed after the revolution. However, even though the states were subordinate partners, they played a more significant role during the first years of the 1917 Constitution than they do today. Indeed, ever since the inception of the distribution of powers rule in 1847, the growing accumulation of federal powers at the expense of the states has cut deeply into the original distribution of powers. This trend has operated as a zero-sum game in which the powers granted to one level of government prohibit the other level from exercising the same powers. As a result, the states are now overwhelmingly subordinated to the federal government.

As noted above, the 1917 Constitution was the third federal Constitution, the first being enacted in 1824 and the second in 1857. Between the first two constitutions Mexico had several centralist constitutions: one in 1836, one in 1843, and the last in 1853. The main differences and similarities are that the 1824 Constitution established a cooperative model of federalism in which

the powers exercised by the federal government and the states were not separate but, rather, were exercised in conjunction with one another (much like the U.S. model after *McCulloch v. Maryland*).[ix] In 1847, however, the Reformation Act reestablished the 1824 Constitution (with several reforms) and changed the distribution of powers. It separated both spheres of government by granting expressed powers to the federal government and reserved powers to the states. The reason behind this change, given by the drafter of the Reformation Act, Mariano Otero, was that, when conflicts of laws had arisen between the federal and the state governments, Congress's practice of "disallowing" state laws was considered an intrusion (resulting in problems similar to those that arose in the first stage of the implementation of Canada's British North America Act, 1867). In 1847 in Mexico judicial review was not an available remedy to these conflicts; rather, resolution depended on political action in Congress. Not until 1917, under Article 105, was there a judicial remedy for constitutional disputes - a remedy that the Supreme Court still enjoys.

In sum, Article 124 of the Constitution sets out the current distribution of powers, which resembles that set out in the original U.S. Articles of Confederation. However, there is no record of any direct U.S. influence leading to Mexico adopting this form of power distribution in 1847, which is odd, given that this was the year the United States invaded.

Aboriginal Peoples, Languages, Religion, and Human Rights

Since 1992 an alternate legal system for indigenous communities has been given a constitutional basis, meaning that the customs and traditions of Aboriginal peoples, who represent at least 10 percent of the overall population in Mexico, prevail over state and federal law. Many of these customs and traditions are communal. On 14 August 2001 a constitutional amendment was approved for the first time within a multiparty environment, with the ratification of nineteen state legislatures, the abstention of four, and the opposition of eight. This is an exceptional case because the amendment dealt with indigenous rights, which had already been recognized by Mexico when it signed on to the International Labour Organization's Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries in 1990.

Human rights have been traditionally protected through the writ of amparo, but there has been very little advancement since the time that this remedy was first created. Judicial review is not invoked from class actions: it is rooted in personal injuries rather than in a collective and public interest under the law.

As noted, the Constitution does not declare any official language, nor, under Article 4, can any Aboriginal language be discriminated against. Since 1994 a notable effort has been made by all authorities to translate some fundamental laws into Aboriginal languages. This, unfortunately, is often a futile effort since the linguistic signs used to transcribe the Aboriginal languages are not commonly recognized by the native speakers.

Roman Catholicism was Mexico's official religion during most of the nineteenth century. The debate that divided Mexico was precisely the issue of the separation between church and state. A civil war was fought over this issue. The separation of church and state had implications not only for freedom of religion but also for the control of immense tracts of land; registration of births, deaths, and marriages; control of cemeteries; and even official holidays. The first big debate on the formation of the 1857 Constitution concerned the freedom of religion, but it was cancelled. From 1859 to 1862, during the reformation period, President Benito Juarez had to face an enemy inside the country; but from 1863 to 1867 the enemy was outside: the conservative forces allied with the Roman Catholic Church to allow the intervention of France in Mexico's

internal politics. The constitutional provision that enabled freedom of religion was approved in 1873. Since then, under Article 24 of the Constitution, freedom of religion was established, complemented by the separation of church and state prescribed in Article 130. In recent years, in the southern part of the country, the expulsion of Protestant groups from indigenous communities has produced some bloody confrontations (e.g., Acteal, Chiapas in 1997).

Federal Loyalty and Unity

The *Bundestreue* principle embodied in the German federation is non-existent in Mexico. The federal comity is not entrusted to the states; rather, the Mexican Constitution establishes several measures enabling federal intervention whenever a state encroaches upon federal jurisdiction. Such intervention is especially enforced by the Senate, which is considered to represent the states. Moreover, the supremacy clause, complemented by other constitutional provisions, obliges the states to function as a supplementary power whenever the federal government so requires.

Secession is not permitted and no judicial rulings have ever been issued on this topic. This stands in contrast to the United States, where the southern states attempted to secede and, later, Texas tried to separate.[x] There have been some threats of secession in Mexico, however, Chiapas being a case in point. In Mexico a constitutional amendment would be required to enable secession because all the states are cited in the text of the Constitution; thus, to eliminate one would require a virtual reform of the Constitution. This is parallel to the reasoning of the Supreme Court of Canada in its consultative judgment in *Reference Re Secession of Quebec*.[xi]

CONSTITUTIONAL DISTRIBUTION OF POWERS AND RESPONSIBILITIES

Citizenship and Rights

Citizenship in Mexico is dual: each state recognizes a particular citizenship for electoral purposes as well as the fact that each of its citizens is a Mexican national. At the beginning of the federal system colonization was also part of the states' powers, which were concurrent with those of the federal government. This was the case when the colonization of Texas was authorized by the State of Coahuila in the 1830s, making it easier for American colonists to settle in the Mexican province than would have been the case under the stricter measures applied by the federal government. Now immigration is exclusively federal.

Since 1970 Mexican citizenship has been granted to Mexican nationals older than eighteen years of age, in accordance with Article 34 of the Constitution. The rights entrusted to citizens are political in nature and differ from the rights of other nationals and foreigners resident in the country. Article 73, Section XVI,[xii] enables Congress to legislate with regard to nationality, foreigners, citizens, naturalization, colonization, immigration, and the general health of the population. This means that state citizenship is dependent upon Mexican citizenship being recognized by federal authorities. At first, immigration was also concurrent, but it was federalized in the amending process leading to the 1857 Constitution, and since the 1917 Constitution came into effect it has been exclusive to the federal government.

The history of suffrage is quite interesting because it shows the contributions of the states and local governments to the advancement of political rights. The last level of government to recognize women's suffrage was the federal. The municipalities from the states of San Luis

Potosi, a northern province of Mexico, were the first to recognize women's rights (in 1923), and the State of Baja California (in 1953) was the first to allow women to vote in state elections. After this, the federal government finally recognized women's suffrage at the end of 1953.

All elections occur within the jurisdiction of either the states or the federal government, according to the nature of the election being organized. However, the election registrar is federal and the election card is issued by the federal government, and the states must sign agreements with the Federal Election Commission to organize state elections. At the moment only one state, Baja California, has its own electoral registry. However, state elections are legally conducted by state election commissions, which also organize municipal elections. Each state has its own election courts so that elections can be scrutinized within the proper jurisdiction. Article 99 of the Constitution, however, enables judicial remedies to reach a final resolution in the Federal Election Courts, making elections, state or municipal, a federal issue under the guarantee of a republican form of government. Political parties may be registered at state and municipal levels by state election legislation; the current trend, however, has the prevalent and majoritarian political parties being registered at the federal level.

As already mentioned, Spanish is the most common language, but federal law has not declared it to be the official language of Mexico; indigenous languages are respected under Article 4 of the Constitution, which establishes that all federal, state, and municipal authorities shall respect and enforce the customs and traditions of Indian communities. The Mexican Branch of the Spanish Academy of Language attempts to correct the mistakes of colloquial language as well as of those taught at the universities, but this is not an issue on the public agenda. The Constitution defines Mexican society as "multicultural" rather than as "multiethnic" because, as is the case in most Latin American countries, differences among ethnic and linguistic groups are considered to be a matter of culture rather than a matter of race.

The separation between church and state, which was critical in the nineteenth century, has been relaxed by the 1992 constitutional amendments. This has been especially beneficial for priests, who have acquired the right to vote in elections. Their political rights are still incomplete, though, because they cannot be candidates for election nor can they use their sermons to endorse or attack candidates or parties. Some problems involving politics and religion are still under study, such as the tensions between communities where clashes between Roman Catholics and other religious groups have provoked bloody confrontations (in Juan Chamula and Acteal, Chiapas). However grave these problem, though, they are not as bad as they are in many other countries.

Aboriginal and indigenous peoples are regulated under Articles 2 and 4, which were incorporated by the recent amendment process approved in 2002. This new disposition applies to both federal and state jurisdictions in relation to indigenous peoples. This reform was made in accordance with Convention 169 of the International Labour Organization regarding the rights of indigenous peoples and was signed by Mexico at the outset. Here, one can appreciate the influence of international law upon domestic law.

The first regulation under the new constitutional provisions was instituted in 1990-92 in the State of Oaxaca, the state with the largest proportion of indigenous peoples. It established the possibility of enforcing an alternate legal system based on indigenous customs and traditions rather than on state law. Indian courts have also been established in the States of Oaxaca and Quintana Roo (Mayan population), and they have proven to be successful. There is still no federal statute regarding indigenous rights, but many state laws have been enacted. An example is the Oaxaca Election Code, in which the exercise of political rights falls within the scope of

indigenous customs and traditions, and no political parties are involved in the elections of 418 out of 570 municipalities.

Economy, Resources, Environment

Economic policy making is under the control of the federal government. Since 1883 commerce has been an exclusive competence of the federal government. The central bank was created without serious questioning in 1925, after the monetary crisis brought on by the Mexican Revolution. In addition, under the current Constitution, Article 131, the executive branch has full powers over international commerce.

Article 73, Section XVII, establishes the power of the Congress to enact legislation on general communications and transportation, but without excluding state regulation with regard to state communications and transportation (whether on roads or water).

Most natural resources are regulated by the federal government. Article 27 prescribes federal ownership of natural resources such as minerals and oil. The Continental Shelf and seabed also belong to the nation. Moreover, federal courts have ruled that, whenever the Constitution refers to "Nation," it should be understood that the federal government is its legal representative. Regulation of forests and hunting is concurrent, but federal legislation may preempt state legislation in these matters.

Since the 1960s energy policy has been controlled by the federal government and is not subject to private exploitation. Thus electricity and nuclear power have been exclusively under the authority of federal organizations, and no participation from the states has been allowed. Even taxation related to electric energy is exclusively federal, under Article 73, Section XXIX, Subsection 5a.

Agriculture is a concurrent subject that the states have neglected to develop, and their role has declined relative to that of the federal government's. This is because the federal budget has been the most importance source of income for agricultural programs. Environment is also a concurrent subject, and both the states and the federal government regulate and enforce it. The overwhelming regulatory action of the federal government, however, overshadows that of the states. The right to a clean environment is established in the all-encompassing Article 4, and environmental protection is entrusted to federal courts as well as to federal regulatory agencies. Environmental legislation is extensively complemented through regulations - called "official rules" - approved by the secretary of the environment. These constitute a codification of rules regulating very specific issues. It is therefore possible to say that the subject is not only in the hands of the federal government but, primarily, in those of the president.

Labour and Social

There is no public unemployment insurance or compensation and, perhaps for this reason, the unemployment rate is not as high as those in Canada and the United States.[xiii] This also means that the duration of unemployment is generally shorter in Mexico than in Canada or the United States. The official unemployment rates are lower in Mexico than in the other countries of the region; however, some critics say that the official numbers are understated because of differences in the statistical definition of unemployment. Labour policies are shared by federal and state governments, but regulation has been exclusively federal since 1929. Courts dealing with labour conflicts are concurrent, but the enforcement of labour policies is under federal jurisdiction.

Since 1942 social welfare has been a federal program directed towards public health, insurance, and pensions, but the agency in charge of it is more of a bureaucratic machine than an efficient agency. For that reason it always appears ineffective. There has been some discussion of privatizing this system, but such propositions encounter great opposition.

Since 1917 public health has been considered one of the fundamental responsibilities of the federal government. At that time a general health council was established under the authority of the president, but in 1940 a secretary of public health was created. Responsibility in the area is both federal and state, but the former tends to prevail. Many efforts have been made to give the states more responsibility in this field, however, and the federal government has tried to assume more of a regulatory than an enforcer role with regard to public health policies.

Education was a state power until 1934, when an amendment to Article 3 of the Constitution made it concurrent. Education in public schools is required to be non-religious, and all members of the population have the right to attend these schools until Grade 9 (which corresponds to primary and secondary education in North America). Public education is free. Colleges and universities may be established by federal and/or state governments, and they are also free (or they charge such insignificant tuitions that they are practically free). Since 1980 the characteristic of "autonomy" for certain public universities has been recognized in the Constitution, meaning that the executive branch has no authority over such institutions. They are subject only to general legislative and judicial controls. This constitutional provision applies not only to the federal chartered universities but also to the state universities.

Beginning in 1995 the federal government undertook educational reform as an exercise in "new federalism," and the states were given control of public primary and secondary schools. Many states claimed that this was merely a move to undermine the powerful teachers union by scattering the school system over thirty-one states and one federal district. Others confessed that they could not administer all these schools. In the end, this measure worked out, but it continues to show centralist features.

Security

Mexico took from the United States the general framework for internal security, but practice has tended to alter it. The so-called permanent armed forces - the army, navy, and air force - are under federal authority and the direct command of the president. These are primarily concerned with external security, but since the 1994 Chiapas turmoil, as well as increased concern about drug trafficking, they have increasingly been involved in internal issues. Although formally the states are part of the larger system through the militias under their control, since 1940 a federal statute has made state militias a reserve of the permanent armed forces subject to the federal government, thus excluding state intervention in civil protection. There was an attempt to reverse this trend in the 1999 constitutional amendment to Article 73, Section XXIX-I, by which "civil protection" was to be a common power of the three levels of government. In any case, since Mexico has not been involved in any foreign hostilities since the Second World War, the issue of security and even terrorism has ranked below other emergencies (such as earthquakes, hurricanes, and poverty).

National defence is an exclusive federal power in Mexico, just as it is in the United States; but the powers of the Mexican president are linked to congressional approval. Therefore, there is no Mexican equivalent to the American War Powers Resolution, which gives the American president the power to fight a war without the consent of the U.S. Congress.

Civil Law

Civil law is under the jurisdiction of both state and federal governments. In this realm there is no clear constitutional demarcation. Criminal law is also under state jurisdiction, although a uniform criminal code was published in 1963, with no binding effect upon the states. Article 73, Section XXI, allows Congress to define crimes as federal. As noted above, courts in Mexico are organized in accordance with federal and state powers. Scrutiny over criminal procedure under Article 14 is, however, a federal issue and, as a result, federal courts may deal with conflicts or violations of procedure and the wrongful enforcement of state criminal codes. In the end, all cases, civil or criminal, may go to federal courts for judicial review through the writ of amparo.

Foreign Affairs

Foreign affairs are conducted by the president with the consent of the Senate. Mexicans are beginning to debate whether the Senate should participate in treaty negotiations, but since there is no constitutional provision referring to "advice" by the Senate, the executive branch has been reluctant to let it intervene in the process of negotiation. Presidential powers over the making of treaties were increased by the Federal Act on Treaties, 1992, by which executive agreements signed by departments of executive and public agencies have the same authority as treaties. On the other hand, in accord with Article 117, Section I, states have no power to sign international agreements despite the common practice of states along the U.S. border reaching agreements on various issues with their American counterparts. In November 1999 the Mexican Supreme Court delivered a standard, or "thesis," by which international treaties were ranked below the Constitution, with domestic law being lowered to third place (Thesis LXXVII/99).[xiv] Following, in part, the opinion of U.S. Justice George Sutherland in *U.S. v. Curtiss-Wright Export Corp. et al.*,[xv] the Mexican Supreme Court ranked international treaties higher than federal and state laws. This was due to the status given to the president as head of the Mexican State (and thus encompassing all levels of government) as well as the fact that the Senate represents all of the states. This doctrine has been highly criticized because of its damaging impact upon federal and state laws. In the first place, federal laws cannot be amended, repealed, or modified except according to the same legislative procedure that led to their creation (Article 72, Section f),[xvi] and treaties in Mexico are not necessarily implemented by legislative enactments, being considered self-implementing (to use the language of common law countries).

Treaties and federal acts are made in accordance with different constitutional procedures and, therefore, the former cannot change the latter. Similarly, as far as state laws are concerned, according to Article 133 treaties cannot be considered the supreme law of the land unless they follow the distribution of powers given in the Constitution. At this point, the court has not made it clear why treaties are not limited by this distribution of powers, nor has it made it clear why the executive and the Senate are considered to be beyond state powers. It should be noted, however, that this last thesis has no binding force comparable to that of the *stare decisis* doctrine of the common law countries, but it is the most recent dictum on the subject.

DISTRIBUTION OF OPERATIONAL POWERS

Outside the regular control exercised by political parties, especially when they are federation-wide, each level of government has its own elected authorities and its own heads of powers

established in accordance with the Constitution. Exceptions to this rule have been made for the growth of explicit federal powers by constitutional amendments and by judicial review through the writ of amparo, a procedure sustained before federal courts.[xvii] During the nineteenth century Mexican state constitutions were more assertive then they are now as they clearly stated that no final resolution by the branches of state governments could be revised by any other power or level; however, these dispositions have lost their meaning and have been openly repealed.

The same is true for the intervention of state governments in the federal domain. With regard to the enforcement of Mexico's historic constitutions, state legislatures played a very important role in the formation and approval (or disapproval) of federal laws as well as in the designation of federal authorities. For example, the states initiated most of the constitutional amendments that were considered in 1847 for the reestablishment of the federal system after a period of centralist rule. Even today state assemblies have the right to initiate federal laws (Article 71, Section III), and amendments to the federal Constitution require approval by a majority of the states (Article 135). There has been significant state influence, as witnessed during the 2002 amendment to the Constitution concerning indigenous rights, when, for the first time during the twentieth century, a presidential bill to reform the Constitution was challenged by the states at the point of final passage.[xviii]

Since 1983 state assemblies have also been empowered to suspend municipal authorities whenever they deem it appropriate as well as to designate new municipal councils. The same process may apply when the federal Senate considers there to be an absence of legal authority in a state. In such circumstances the Senate is empowered to declare the absence of effective authority and to appoint a provisional governor in order to call for an election to renew law and order in that state (Article 76, Section V).[xix] This was a common practice from 1879 to 1975, and although no declaration has been issued since then, the Senate's constitutional power remains.

Territories and Boundaries

After neglecting its borders at the beginning of the nineteenth century, Mexico learned about their importance during the U.S. invasion in 1847. The lack of definitions of its Texas borders gave the United States a pretext to claim more western territory. Eleven treaties have since been made to precisely define these borders. In 1857 the internal borders among the thirty-one Mexican states and the federal district began to be drawn. The constitutional provision refers to the states as the primarily interested parties, with responsibility to determine their own borders by agreement. If this is not possible, then Congress can intervene as an arbitrator in order to define such borders (Article 73, Section IV). If the state parties do not agree, or if only one is reluctant to follow the congressional decision, then the Supreme Court takes the case (Articles 104 and 105). Congress has intervened many times to arrange borders, but some recent cases are now under consideration by the Supreme Court. Examples include the borders between the Colima and Jalisco, and between Quintana Roo and Campeche. These cases will probably be the first ones to be decided on judicial grounds as, in the past, whatever conflict these states might have had were solved by negotiation under the supervision of the federal government.

As mentioned above, state boundaries and territories are considered inviolate and can only be changed through constitutional amendment. One exception is Quintana Roo, where major tourism resorts are now established (i.e., Cancun). It suffered the alienation of its territory during the difficult years of the Mayan revolts, which occurred in Yucatan Peninsula between 1847 and 1911. In 1902 Quintana Roo was first created as a territory, then suppressed, and then

reinstalled. In 1975 it was again recognized as a state, the youngest of the Mexican federation.

The most controversial territorial issue that Mexico has encountered - besides the secession of Texas and the cession of its territory in 1848 through the Treaty of Guadalupe Hidalgo - has been the formation of new states within the territory of other states. The procedure now contained in the Constitution (Article 73, Section III) derives from the creation of the State of Guerrero in 1849, when it separated from three other states: Mexico,[xx] Michoacan, and Puebla. The procedure followed was not precisely that prescribed by the Constitutional Reformation Act, 1847, but one that was used in its creation. This exception subsequently became the rule, involving the state legislatures affected by the separation, then the opinion of the rest of the state legislatures, the federal government, and the people affected. This cumbersome procedure is harder to follow than is the simpler constitutional amending process, but it is now the current rule regarding the creation of new states within the territory of existing states.

A final territorial debate concerns the status of the federal district, Mexico City, which aspires to become a state, despite the doubts expressed by a number of politicians. Looking to Ottawa and Washington does not help Mexico City because its history and population are so different from theirs. Many Mexico City natives look, instead, to the examples of Buenos Aires, Vienna, and Berlin, all of which are city-states within their respective federations.

Fiscal Relations

There is no tax autonomy in Mexico. Virtually all revenues are controlled by the federal government. This has been the outcome of a process that occurred during the twentieth century and that involved centralizing taxation in the name of "fiscal coordination." If we apply the distribution of powers established in Article 124 of the Constitution, we might conclude that the taxation powers of the federal government would be those granted expressly by the Constitution and that the states would have power over "reserved taxes." This is not the case, however, because, under Article 73, Section VII, the federal government may levy taxes on all kinds of subjects - even those considered to be reserved powers of the states - for the purpose of covering the federal budget. Under Article 115 municipal governments have their own-source revenues, but the conditions are established by state law.

In 1980 the federal government began to sign fiscal agreements with all the states in order to consolidate centralization. The states would not be concerned with the administration of taxes, allowing the federal government to collect tax revenues and give the appropriate income back to the states (on condition that the states would not levy the reserved taxes that the federal government would be charging taxpayers). In this way double taxation could be avoided. This system is now under fire, however, and there is talk about reform.

States are prohibited from borrowing money from international sources or foreign corporations, and from contracting debt in foreign currency (Article 117, section VIII). Many states are in debt to such federal agencies as the Social Security Administration (health services) and the Federal Electric Commission (lighting and energy), but the payment of these debts involves many political nuances and negotiations. In the end, the federal government may subtract the indebted amount from federal grants to the states, but this is usually prevented by political pressure. The administration of federal revenues is approved by Congress, and the president can (and is supposed to) arrange flexible grants-in-aid to the states, taking account of the asymmetry in the development of the various Mexican states and channeling grants to meet

actual needs and/or the payment of public debts.[xxi] There is no fixed rule though, and the management of federal money is up to the federal government.

Regulatory Agencies

The first regulatory autonomy formally recognized by law related to the governance of public universities, beginning with the National University of Mexico, which was declared autonomous in 1929. The debate around this new autonomy turned on the regime of subsidies from the federal government because, at the time, it was believed that all public agencies whose budget came primarily from the federal government had to be part of the centralized structure of the federal or state governments. In 1935 a national debate resolved the issue in favour of the subsidized but autonomous public universities. In 1980 this matter was taken to the constitutional level by the amendment of Article 3. The U.S. Tennessee Valley Authority served as a model for Mexico with regard to developing rural and severely impoverished areas in 1925 and 1934, when the Irrigation Commission and the Federal Electric Commission and other regulatory agencies were created. This trend has been augmented ever since in such strategic areas as central banking (Article 28), elections (Article 41), the environment, and oil and energy.

Article 90 is the constitutional basis for the establishment of regulatory agencies under the head of decentralized public administration. Until a few years ago judicial review of the acts and resolutions of these agencies was limited and was based on formalities of the Amparo Act, 1936; now, however, it is a remedy available for challenging whatever rule or act is issued by these agencies.

Municipal Relations

The centralized scheme of the federal budget and the distribution of grants to states and municipalities is repeated in the relations between states and municipalities, in which all local budgets are approved by the state legislatures and in which the state governments allocate grants to the municipalities. Land for agricultural purposes and the formation of *ejidos* (communal property) for *pueblos* (villages) is mainly the product of federal and state commissions on land reform. Federal and state property, as well as municipal property, can be severed from its original ownership by a formal resolution or decree and then granted to another level of government for a specific purpose (e.g., building a school, creating an ejido, or promoting other public interest projects). Since 1917 all laws in Mexico have been oriented towards the fulfillment of social goals, especially those that benefit peasants and workers. Consequently, programs to spend federal funds or to transfer property to these social groups receive special legitimacy. The main source for helping these groups is the federal budget, under Item 33 of the annual federal budget, which is aimed at fighting poverty.

Since 1917, when it was first devised, a specific judicial remedy concerning "constitutional controversies" (or litigation), as filed before the Supreme Court in its original jurisdiction, has been used to solve disputes over powers between federal and state jurisdictions. In the amending process of 1994, this remedy was widened to include municipalities as parties. Ever since, municipal governments have been the most active in filing constitutional controversies against state and federal legislation that they consider to be encroaching upon their autonomy. Since the constitutional reform approved for the State of Veracruz in 2000, the same remedy has been adopted by other states to protect the internal distribution of powers of state

constitutions.

Constitutionally each level of government is autonomous and, therefore, no executive/administrative decision or appointment has to be reviewed by another level of government. Some grants-in-aid, however, do impose conditions on the state administrations to create agencies and to make appointments to their staff in accordance with federal guidelines or with the approval of the federal government, but such cases are exceptional. In the same fashion, states can replace the *Ayuntamientos* (city officials) when the legislatures suspend them on grounds of accountability (Article 115, Section I). Municipalities are also generally responsible for the management of their resources (Article 115, Section IV), but, in many cases, there is the requirement of final approval from the state legislature. Consequently, hiring and the actual appropriation of municipal funds is a process in which municipalities are dependent upon final approval from the legislatures. For example, in the case of Garza Garcia City near the Monterrey state capital of Nuevo Leon, the Supreme Court revoked the Ayuntamiento resolution on wage increases for the members of the city council (1992) based on the fact that state legislation had established conditions for this increase and that no authorization from the legislature had been previously given.

EVOLUTION OF THE CONSTITUTIONAL DISTRIBUTION OF POWERS AND RESPONSIBILITIES

The distribution of powers is strictly a constitutional issue, and statutes to modify it are not permitted. Amending the Constitution involves the participation of the president, the Congress (by a two-thirds vote of a quorum of its members), and the state legislatures (with approval by a majority). More than 300 amendments have been made, largely on the initiative of the president. The first amendment was made in 1934, and the most recent in 2002.

As noted, the distribution of powers as established in Article 124 stipulates that the slightest doubt about a federal power should be solved expressly by a constitutional amendment and not by judicial interpretation or simple legislative resolution. This is the reason for the large number of amendments made during the twentieth century. However, during that period the predominance of one party (the Partido Revolucionario Institutional) at both levels made it easy for an incumbent president to modify the Constitution at the outset of his administration. This reality has vanished, and the amending process is much more difficult now because Mexico is no longer subject to single-party dominance.

Citizens are not authorized to play a direct role in the federal constitutional amendment process. In some states (Coahuila, Guerrero, Chihuahua, Veracruz, Tlaxcala, etc.) referendum and popular initiative processes have been incorporated in order to modify legislation, but that has not been the case for the constitutions of the states.

Again, it is important to emphasize that there is no broad judicial interpretation in the Mexican federal system. Mexico has few examples of this, and these are exceptional - such as the Supreme Court interpretation of the last part of the Mexican Supremacy Clause, which is a translation of the U.S. Constitution with respect to the role of state judges. The federal judiciary exercises a monopoly on judicial review, and state judges are not allowed, despite the constitutional provision in Article 133, to pronounce on the constitutionality of laws. The ancillary power established in Article 73, Section XXX, has only been interpreted once, in the Oaxaca controversy, but this was changed afterwards by a specific amendment to the

Constitution (as noted above).

The first constitutional amendment to increase the power of the federal government was approved in 1883, and it dealt with commerce. Subsequently, over the course of the twentieth century, virtually all social matters (such as labour and social welfare) were absorbed by the federal government. In accordance with Article 124 every new power exercised by the federal government has been derived from a specific provision of the Constitution, and this has required a never-ending amending process. The original rule, crafted in 1847, called for allocating expressed powers to the federal government, the pretense being that this was limited to few powers and that the remainder was to be assigned to the states. Since 1883, however, more and more powers have ended up in the hands of the federal government, and fewer and fewer have been left to the states. This is because areas of jurisdiction are regarded as exclusive and, therefore, assignment to one level excludes assignment to the other. To complement this panorama the federal government has an ancillary power - not widely exercised but still there - that provides a further tool for the federal judiciary to favour federal over state jurisdiction.

THE ADEQUACY AND THE FUTURE OF THE DISTRIBUTION OF POWERS

Use of the Constitution's amending process to add new powers to the federal government was the main trend during the twentieth century. With the move towards pluralities of political parties rather than majorities, the amending process has been made more difficult and it has become harder for the federal government to reform the Constitution (and, therefore, the distribution of powers) at will. Consequently, the problem for Mexico is what to do about a highly centralized system that has proven to be inefficient and that even the federal government does not want because it adds to the number of policies for which it must be accountable. The issue has been under consideration by the Senate and the House for some time now, but there has been no final resolution.

The ideal solution would be to transfer some of the federal powers to the states. Many of these powers, however, cannot be taken from federal hands easily because, even though they might refer primarily to a state responsibility, they require some element of federal intervention. Furthermore, in some cases states are reluctant to receive additional powers because they do not consider themselves to be capable of performing them. An example of this is the episode of education reform (described above). Another choice would be to follow the dual system set down in the Canadian Constitution.

A broad agenda of reform proposals is now before Congress, with the following options: (1) keeping the federal powers more or less as they are today, without eliminating important functions; (2) striking from the Constitution the ancillary power established in Article 73, Section XXX, in order to avoid future interpretations in favour of the federal government; (3) listing the main state powers so that further federal encroachment is prevented; (4) allowing for delegation of powers from the federal to the state level, as occurs in the German federation, so that, on a case by case basis, many of the subjects now under federal jurisdiction may be shared with the states; and (5) spelling out the concurrent powers, shared constitutionally by both the federal and state governments. The solution probably lies somewhere within these five paths or in a combination thereof.

Since the presidency of Ernesto Zedillo (1 December 1994 - 30 November 2000) a "new federalism," American style, has inspired many programs of federal devolution to the states, beginning with reform on education. After Vicente Fox took office, the Mazatlan Declaration

was signed in 2001 and the formation of the National Conference of Governors has put pressure on the federal government to undertake a major devolution of federal powers to the states, beginning with fiscal devolution. Despite this pressure and the agreement of the majority of political parties to embark upon this "reverse" federalism, no other actions have as yet taken place. Many bills have been introduced in Congress by representatives of all parties, and they are waiting to be approved. Nevertheless, there is an evident trend favouring a deliberate process of decentralization occurring throughout the country.

Mexico has yet to achieve a regional counterbalance to federal powers, despite the fact that roughly half of the states are governed by opposition parties. This situation is explained by the internal divisions within the three predominant parties, the lack of leadership from the incumbent president with regard to the party that supported him in the 2000 election, as well as the lack of leadership on the part of various governors. Above all, the legacy of the 300 constitutional amendments that strengthened the presidency during the more than eighty years when the Partido Revolucionario Institutional was in power made that office the most powerful in the country.

The development of the presidential system is the driving force behind all the changes that have pervaded the amending process of the Mexican Constitution not only with regard to the distribution of powers but also with regard to the separation of powers. Before 2000, centralization was an expression of the powers exercised by the president through the Partido Revolucionario Institutional. Now that Mexico has a truly pluralistic government**,** there are proposals for a new constitution that would eliminate the presidentially oriented provisions that have plagued Mexican constitutional reforms for more than eighty years.

Finally, to take another very recent development, the North American Free Trade Agreement (NAFTA) dispute resolution panels and the procedures of international committees have produced some changes in statutory rules but not in the constitutional distribution of powers. Academics take a negative view of the panel system within NAFTA, which they see as becoming an alternate means for adjudicating issues outside the national courts and applying different rules.[xxii] This has been true in labour cases, where the hierarchy of international treaties, signed between Mexico and the International Labour Organization, has changed the interpretation of the Mexican Supreme Court with respect to the supremacy clause and the role of domestic law and state courts (as discussed above). Thus, it would appear that, in the near future, common law concepts could influence some aspects of the Mexican legal system, just as happened in reverse with the influence of the European Union upon Britain. Some standing requirements within the environmental commissions of NAFTA have already been accepted by Mexico, altering the civil procedure rules that govern the national law.

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[i] Some historical figures on Mexico's demographic growth are:

Year	*Significance of the year*	*Population*
1917	Current Constitution promulgated	14,630,000
2000	Last census	100,349,800
2005	Projected	106,719,000

[ii] The distribution of population within each of the thirty-one states and the federal district is located at the following Web site:

<http://www.e-mexico.gob.mx/wb2/eMex/eMex_INEGI_Estadisticas_sociodemograficas>

(accessed 20 February 2004).

[iii] This is the language spoken by the ancient Aztecs and is now the most widely spoken Aboriginal language. According to the Statistical Bureau of Mexico, almost 1,197,328 people speak Nahuatl, 713,520 speak Mayan, and 380,690 speak Zapotec. See Jorge de Buen on the Web site mentioned in note 2 (look under the descriptor "población hablante de lengua indígena. Diversidad linguística y monolinguismo")**.**

[iv] A complete analysis of the languages spoken in Mexico is found on the Web site mentioned in note 2.

[v] This category may be equivalent to the Métis in Canada.

[vi] The GDP is 1.3 percent for the year 2003.

[vii] This article reads as follows: "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation *expressly delegated* to the United States, in Congress assembled" (emphasis added).

[viii] Albert P. Blaustein, "The U.S. Constitution: America's Most Important Export,"

<www.usinfo.state.gov/journals/itdhn0304/ijde/ijde0304.htm> (accessed 19 July 2004).

[ix] *McCulloch v. Maryland* 17 U.S. 316 (1819).

[x] See U.S. Supreme Court judgment in *Texas v. White* 74 U.S. 700, 1869.

[xi] *Reference Re Secession of Quebec* (1998) 161 D.L.R. (4th) 385.

[xii] Unless otherwise indicated, all articles cited refer to the 1917 Constitution, as amended.

[xiii] <Bloomberg.com>, "Mexico Jobless Rate Has Biggest Rise in Almost a Decade (Update 2)." According to this source, at the end of 2003 the unemployment rate in Mexico was 2.96 percent (accessed 8 July 2004).

[xiv] Suprema Corte de Justicia de la Nación, "Tratado internacionales: Se ubican jerárquicamente por encima de las leyes federales y en un segundo plano respecto de la Constitución Federal," (Tesis LXXVII/99) *Semanario Judicial de la Federación y su Gaceta,* 9a. época (November 1999), p. 46.

[xv] *U.S. v. Curtiss-Wright Export Corp. et al.* 299 U.S. 304, 1936

[xvi] The Spanish version of the sentence just mentioned reads as follows in the Constitution: "Artículo 72, inciso f): En la interpretación, reforma o derogación de las leyes o decretos, se observarán los mismos trámites establecidos para su formación." This disposition goes back to the 1812 Cádiz Constitution.

[xvii] Since its creation the writ of amparo has encompassed different procedures: habeas corpus as well as judicial review of laws and constitutional control measures combined in one action of law. Habeas corpus is mostly referred to as "indirect amparo." It is filed before a district court and is intended to protect the "individual guarantees" (human rights) established in the Constitution. The purpose of "direct amparo" is to review the final decisions of state courts, based on Articles 14 and 16 of the Constitution, which establish the due process of law, and it is filed before the circuit courts of the federal judiciary.

[xviii] As mentioned, in that amendment nineteen states voted in favor, eight voted against, and four abstained.

[xix] This article enlists the exclusive powers of the federal Senate. Under Section 5 of the Constitution, the Senate may declare a provisional governor as appointed once the legitimate authorities of any state are absent or become illegitimate.

[xx] The name "Mexico" is given to three entities: the country as a whole, the capital city, and a state. In the past, Mexico City was the capital of the province as well as the entire country, but in 1824 the Constitution created a federal district separate from the province or state.

[xxi] In 2001 the total amount of grants-in-aid to the states, taken from the federal budget, shows the degree of dependence: $158,756,733, 267 (equivalent to US$16 billion). From this, the State of Mexico ($2 billion), Mexico City ($1.08 billion), and Veracruz ($1 billion) received the lion's share. INDETEC, "Diagnostico sobre el sistema hacendario Mexicano" (unpublished document, 2003).

[xxii] In August 2000 the British Columbia Supreme Court ruled in the case of *Metalclad Co. v. Mexico* under the Chapter 11 dispute resolution procedure of NAFTA, by which Mexico was ordered to pay damages for the expropriation of an American investor, making the interpretation of "regulatory expropriation" applicable, despite the fact that there is no such practice in Mexican law.