

**The Three Most Important Features of My Country's Legal System that Others  
Should Understand  
Mexico**

**Fernando Villarreal-Gonda\***

**Abstract:** I. The Mexican Legal System belongs to the Civil Law Tradition and has been influenced by the US Legal System. II. There is a gap between law and reality. III. There is tension on the system to solve legal, political, economic and social issues in accordance with the law.

**I. Law in books.**

**Legal tradition.** The Mexican Legal System<sup>1 2</sup> clearly belongs to the Civil Law Tradition, although it has been highly influenced by the US Legal System, mainly in the area of Constitutional Law.<sup>3</sup>

**Legal structures.** Enacted in 1917, the Constitution<sup>4</sup> provides for a Federal, Representative and Democratic Republic,<sup>5</sup> composed of 31 States and a Federal District.<sup>6</sup> It is also characterized for containing a very detailed chapter on human rights<sup>7</sup> and social rights (e.g. rights of workers).<sup>8</sup>

**Federal government.** The “Federal Supreme Power” is divided into three branches: the Legislative, the Executive and the Judicial.<sup>9</sup> The first two are renewed by elections.<sup>10</sup> The Legislative is composed of the Senate and the Chamber of Deputies.<sup>11</sup> The Senate

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\* Academic Dean, Facultad Libre de Derecho de Monterrey, Mexico. Licenciado en Derecho, Universidad de Monterrey, 1985. LL.M., Harvard Law School, 1990. DEA Droit International Privé, Université de Paris I, 1991.

<sup>1</sup> See VARGAS, Jorge, Mexican Law [http://www.mexlaw.com/best\\_websites/1\\_introduction.html](http://www.mexlaw.com/best_websites/1_introduction.html). See also AVALOS, Francisco and Elisa Donnadieu, An Electronic Guide to Mexican Law, <http://www.nyulawglobal.org/globalex/Mexico.htm>.

<sup>2</sup> Legal information, in Spanish, may be found at <http://www.ordenjuridico.gob.mx/>. Official websites include: <http://www.camaradediputados.gob.mx/> (Chamber of Deputies), <http://www.senado.gob.mx/> (Senate), <http://www.presidencia.gob.mx/> (Presidency), <http://www.scjn.gob.mx/PortalSCJN/> (Supreme Court) and <http://www.directorio.gob.mx/index.php> (other agencies).

<sup>3</sup> Lately, other fields of law have been influenced by the US System, including trade and competition.

<sup>4</sup> A translation of the Federal Constitution, by Carlos PÉREZ-VÁZQUEZ, may be found at <http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf> (Last updated 2005).

<sup>5</sup> Article 40.

<sup>6</sup> Article 42.

<sup>7</sup> Articles 1 to 29 of the Mexican Federal Constitution. Unless otherwise indicated, references are made to the Federal Constitution.

<sup>8</sup> Article 123.

<sup>9</sup> Article 49. See HERNÁNDEZ, Ma. del Pilar, *Division of Powers in the 1917 Mexican Constitution*. Mexican Law Review, Number 2, December 2004. <http://info8.juridicas.unam.mx/cont/2/arc/arc5.htm>.

<sup>10</sup> Article 41.

<sup>11</sup> Article 50.

is formed by 128 members, elected to 6-year terms.<sup>12</sup> The Chamber of Deputies is integrated by 500 individuals<sup>13</sup> who serve 3-year terms.<sup>14</sup> Consecutive re-election is prohibited.<sup>15</sup>

The Executive Branch is vested in the President (chief of state and head of government). The President is elected for a 6-year term and may not hold office a second time.<sup>16</sup> There is no Vice President. The President freely appoints and removes Secretaries to the Cabinet.<sup>17</sup>

The Judicial Power is vested in the Nation's Supreme Court of Justice, the Electoral Tribunal, the Circuit Courts (both Collegiate and Unitary) and the District Courts.<sup>18</sup>

Supreme Court Justices are appointed by the President and approved by the Senate.<sup>19</sup>

**State governments.** Powers not explicitly vested in the federal officers are reserved to the States.<sup>20</sup> Each State has its own Constitution, which provides for Legislative, Executive and Judicial Branches.

**Judicial review.** Federal courts are empowered to exercise jurisdiction over "Amparo" cases. "Amparo" is a native institution. It is a constitutional remedy to obtain relief against violations of constitutional rights committed by any public official (including the Federal or State Legislatures, officials and judges). Notice that relief applies only to the petitioner. Thus, for example, a Federal Law may be declared unconstitutional and not applied to the petitioner but still be applicable to others. The decision serves only as a reference for subsequent cases, not having the same force of precedents in Common Law Systems.<sup>21</sup>

**Sources of law.** The Federal Constitution is the highest source of Law.<sup>22</sup> The President may conclude treaties, with the approval of the Senate.<sup>23</sup> Congress may enact laws, bills and codes in those matters explicitly vested on the Federal Government.<sup>24</sup> The President executes the laws enacted by Congress and, to that end, may issue regulations, decrees

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<sup>12</sup> Article 56.

<sup>13</sup> Article 52.

<sup>14</sup> Article 51.

<sup>15</sup> Article 59.

<sup>16</sup> Article 83.

<sup>17</sup> Article 89.

<sup>18</sup> Article 94.

<sup>19</sup> Article 96.

<sup>20</sup> Article 124. See CARBONELL-SÁNCHEZ, Miguel, *The federal State of the Mexican Constitution: an introduction to its problematic*. Mexican Law Review, Number 3, June 2005. <http://info8.juridicas.unam.mx/cont/3/arc/arc1.htm>.

<sup>21</sup> Article 105 provides for other methods of judicial review.

<sup>22</sup> Article 133.

<sup>23</sup> Article 89. See MÉNDEZ-SILVA, Ricardo, *Treaty Making, Genealogy and the Constitution Today*. Mexican Law Review, Number 4, December 2005. <http://info8.juridicas.unam.mx/cont/4/arc/arc7.htm>. SERNA-DE-LA-GARZA, José María, *The International Treaty-Making Power and the Division of Jurisdictions in the Mexican Federal System*. Mexican Law Review, Number 6, December 2006. <http://info8.juridicas.unam.mx/cont/6/arc/arc9.htm>.

<sup>24</sup> Article 124.

and executive orders.<sup>25</sup> *Jurisprudencia* (the ensemble of five consistent decisions relative to a specific point of law, uninterrupted by any incompatible rulings, and rendered by the highest Federal Courts) has a binding effect on inferior Federal and State Courts that are within the geographical jurisdiction of the tribunal that established it.<sup>26</sup> General Principles of Law and Doctrine are secondary sources of law. Custom is occasionally recognized as a source of law.

## **II. Law in action.**

**The role of the law: the primacy of the law.** Both Federal and State Legislatures expressly declare and practice their predominant position as lawmakers. For example, the legislation declares that all individuals must obey the law, and even more, that ignorance of the law does not excuse compliance with it.<sup>27</sup> Disuse, custom or practice contrary to the law cannot be pleaded against its observance.<sup>28</sup> Judges are subject to the law and bound by its wording.<sup>29</sup> All the aforementioned elements may lead to the conclusion that Mexican society must function in accordance with the rule of law.

**The gap between law and reality.** Few examples will suffice to conclude that this is only a formal expression of the theory of the Primacy of the Law, but there is a great distance between the law as it is enacted and its application:<sup>30</sup> 1) The Federal Constitution is “rigid”.<sup>31</sup> However, it has been amended 7 times only in 2007.<sup>32</sup> 2) States are free and sovereign to organize their internal regimes,<sup>33</sup> but traditionally State Civil Codes were identical to the Federal one. 3) The Federal Constitution contains very detailed provisions on human rights in criminal proceedings.<sup>34</sup> Nevertheless, Amnesty International asserts “*Leyes, pero no justicia*”.<sup>35</sup> 4) “Men and women are equal under the law.”<sup>36</sup> Nonetheless, Human Rights Watch insists that “violence against women is a major problem in Mexico.”<sup>37</sup> 5) Individuals have the constitutional right to be educated.<sup>38</sup> Yet, OECD states that “around 40% of Mexican 15-year-olds in 2003 had

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<sup>25</sup> Article 89.

<sup>26</sup> Articles 192-197B, *Ley de Amparo*.

<sup>27</sup> Article 21 of the Federal Civil Code.

<sup>28</sup> Article 10 of the Federal Civil Code.

<sup>29</sup> Article 14 of the Federal Constitution and Article 19 of the Federal Civil Code.

<sup>30</sup> See VALADÉS, Diego, *The Rule of Law as a Cultural Problem (The Case of Mexico)*. Mexican Law Review, Number 5, June 2006. <http://info8.juridicas.unam.mx/cont/5/arc/arc8.htm>.

<sup>31</sup> Article 135.

<sup>32</sup> See [http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum\\_crono.htm](http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum_crono.htm).

<sup>33</sup> Article 40.

<sup>34</sup> Articles 14, 16, 17, 18, 19, 20, 21, 22, 23.

<sup>35</sup> <http://web.amnesty.org/pages/mex-070207-action-esl>.

<sup>36</sup> Article 4.

<sup>37</sup> [http://hrw.org/reports/2006/mexico0506/6.htm#\\_Toc134005773](http://hrw.org/reports/2006/mexico0506/6.htm#_Toc134005773).

<sup>38</sup> Article 3.

literacy skills below the minimum levels required for normal functioning.”<sup>39</sup>

### **III. The Legal System’s tension.**

Tension exists on the system and its institutions to face and solve important legal, political, economic and social issues according to the principles of a modern constitutional democratic state.

**Emergence of the Supreme Court.** In the book, the Federal Constitution establishes a separation of powers. In reality, the Executive has traditionally been the dominant branch.<sup>40</sup> Reforms implemented since 1989 have opened the Mexican political system. Opposition parties have made historic gains in elections at all levels.<sup>41</sup> In the middle of this political conundrum, the Supreme Court has heroically emerged as a neutral referee in conflicts between powers and levels of government. A member of the Supreme Court concludes: “Conflicts that in other times were solved through vertical political controls, today, under the impossibility to convene or dissolve in the political arena, find solution in this Court.”<sup>42</sup>

**Federal-State legal issues.** With this political scenario, where different political parties rule in different States, important changes are now being introduced in the way the Federal and State Governments interact: 1) New forms of marriage and family relationships are appearing in certain State Civil Codes, which is leading to new problems in domestic conflict of laws. 2) Federal authorities challenge States’ powers to legislate in certain issues. 3) States are deeply changing procedural laws in order to incorporate the use of oral and adversarial proceedings, which is putting pressure on the Federal Government to promote the modernization of federal laws by introducing oral trials. 4) States initiated a firm movement to press the Federal Government to amend the Constitution in order to adopt clear principles on transparency and access to information.

**Pending social and economic issues.** As a paradox, exactly on the same day that the North American Free Trade Agreement entered into force, poverty and social inequality led to the popular revolt headed by the Zapatista movement (an armed revolutionary group based in Chiapas, one of the poorest states of Mexico). More than 10 years later, “poverty rates remain high, as does income inequality. According to World Bank estimates, over 45 percent of National population was living in moderate poverty in 2005. For extreme poverty, the total was 18 percent.”<sup>43</sup> World Bank states that to secure strong job creation and significantly reduce poverty, the country needs to carry out specific structural reforms needed to accelerate growth.<sup>44</sup>

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<sup>39</sup> <http://www.oecd.org/dataoecd/51/59/38120467.pdf>.

<sup>40</sup> For more than 70 years, Mexico's presidential elections were won by the candidates of the official party, PRI.

<sup>41</sup> <http://www.state.gov/r/pa/ei/bgn/35749.htm>.

<sup>42</sup> GUDIÑO-PELAYO, José de Jesús, *The Supreme Court's Participation in the Construction of the Mexican Democratic Model*. Mexican Law Review, Number 4, December 2005. <http://info8.juridicas.unam.mx/cont/4/arc/arc5.htm>

<sup>43</sup> Mexico Country Brief, <http://web.worldbank.org/>.

<sup>44</sup> <http://web.worldbank.org/>.

Even if to a foreign eye the Mexican Legal System may seem similar to that of other nations in the developed Western Hemisphere, there is still much to be done to ensure the full observance of the rule of law.