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**CONSTITUTIONAL MEANS FOR CONGRESS TO  
PARTICIPATE IN THE SANCTION OF JUDGES.  
A CRITIC TO THE IMPEACHMENT AGAINST  
JUDGES IN MEXICO**

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# Jesús Manuel Orozco Pulido

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## ABSTRACT

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*This article analyses a tool for parliamentary oversight that is established on Mexican constitution, the impeachment. This constitutional accusation is set in order to sanction high public officials, among them members of judiciary, such as Supreme Court justices and federal judges. The Congress holds the constitutional competence for sanctioning political responsibilities, which is a way to implement the system of checks and balances. However, this article argues that the impeachment against Supreme Court justices or federal judges, is a parliamentary tool that arbitrarily infringes the judicial independence. Also, the specific behaviors or omissions that provoke the so called constitutional responsibility, are vague and diffuse. So when applying those normative hypotheses, Congress holds an open space for acting arbitrarily or applying political revenges on judges. It is explained the specific traits of the system for control and sanction of judges that is set inside judiciary, for administrative accountability. The Council of Judiciary is in charge for exercising this internal control. Nonetheless, the congressional tool for calling judges to be responsible before Legislative branch, without any interference of judiciary and without any possibility to challenge the resolution, seems to be an illegitimate interference. Taking into account that judiciary plays a key role in the strengthening of the rule of law and democracy, it is crucial to keep judges protected from external pressures, such as the possibility to be sanctioned by a Congress due to diffuse political responsibilities. Finally, there is a proposal for a constitutional reform so as the impeachment against judges is derogated from Mexican constitution.*

Keywords: Mexican constitution, Impeachment, Judges, Judicial Independence, Congressional oversight.

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# 1. INTRODUCTION

Latin America is a region that lacks strong institutions. Only 50 years ago, many countries of the region lived under the violent umbrella of dictatorships or military regimes. The aftertaste of this relatively new democracies is that presidential systems have enormous quantum of power, which is difficult to control.

The Mexican constitutional system establishes a model of congressional oversight that allows legislative branch to participate in the sanction of judiciary. The so called impeachment, or *juicio politico* as referred in the Mexican constitution, is an accusation that can be applied to judges when they fail with constitutional principles.

The core question for this research is whether or not the congressional impeachment conducted against judges infringes the principle of judicial independence, or instead it is a democratic tool that meets a reasonable, legitimate purpose. I go further to anticipate the hypothesis, because it seems that impeachment against judges actually is an invasion to the principle of judicial independence, and it represents an illegitimate infringement to the principle of separation of powers. For this purpose, this research is divided in certain sections that explain the idea in a deeper way.

The first section is devoted to analyze parliamentary oversight in Mexico, providing examples of specific tools that are arrogated to the federal Congress in order to implement a control on other bodies of government. The second section is devoted to judiciary and democracy, explaining the relevant, protagonist role that judges play nowadays. This section aims to justify why the task of research is how a parliamentary oversight tool, when used against judges, could imply a deprivation of other constitutional principles. A third section aims to explain the juridical and practical structures of the impeachment or *juicio politico*. Specific procedural requirements, rules of majority for ruling the case or explanations to the principle of judicial independence. The fourth and final section proposes a constitutional reform in order to derogate the impeachment against judges because deprives the independence and isolation that judges must keep. Finally, some arguments are devoted to conclude the research, summarizing the points of discovery and proposing a deputation of the Mexican Constitution in order to eliminate this illegitimate clause.

## 2. PARLIAMENTARY OVERSIGHT IN MEXICO <sup>1</sup>

In general words, parliamentary system is the paradigm adopted by European countries and presidential system is broadly used in the Americas. However, there is not a well-defined line of differences for identifying the exact moment in which a system is purely in one side or the other. Differentiating parliamentary and presidential systems is just a theoretical way to bring together the homogenous traits of each political system, so as the common elements allow to identify a general picture of the institutions.

However, features of parliamentary and presidential systems communicate each other, and now it is common to argue about a parliamentarization of the American presidential model, as well as a presidentialization of the European parliamentary model.<sup>2</sup> In practice, States have adopted different tools for the exercise and control of power that use the traits of both models.

Theoretically, Mexico is a federal state, though in the economic and political field it shows deep centralized elements.<sup>3</sup> The Mexican Constitution of 1917 adopted a federal system following the example of the USA, with a regime that agglutinates 32 member states that, at least in theory, keep certain competence for their own sake. The members of the federation adopt the *nomen iuris* state, because they adopt the basic elements of territory, population and government. Although the element of sovereignty is formally recognized to the states in article 40 of the constitution, the true is that their attributions to command their path or to design their institutions are limited.

The fact that the members of the federation are named states might lead to confusions. This is why the whole country is referred in plural, such as United States of Mexico, the official name of the country.<sup>4</sup> The trend to adopt the name United States for referring to a country has been left aside, and those references have been erased in Venezuela (1953) or Brazil (1967).<sup>5</sup>

Mexican political system is classified as a hyper-presidential scheme that allocates huge blocks of power in the head of the executive branch. The president is a body of the State that absorbs the complete power of the executive branch and there is no a vice-president who could serve as a satellite who manages public needs. By the decade of nineties, it was argued that president held

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<sup>1</sup> Some ideas of this section have been published as: Orozco Pulido, Jesús Manuel, "Congressional Oversight over Judiciary or Intrusion of Politics into the Justice? An Analysis of the Constitutional Accusation Against Supreme Court Justices in Mexico", in Mezzetti L. (coord.), *Giustizia e Costituzione agli albori del XXI secolo*, t. 1, Bonomo editore, Bologna, 2017, pp. 547 to 557.

<sup>2</sup> García Roca, Javier, "La función parlamentaria de control a caballo de parlamentarismo y presidencialismo", *Revista de Derecho Público*, núm. 85, 2017, pp. 83 to 122.

<sup>3</sup> Serna, José María, *El sistema federal mexicano. Un análisis jurídico*, México, UNAM, 2008.

<sup>4</sup> Verpeaux, Michel, *Droit constitutionnel français*, 2 edition, PUF, 2015, p. 52.

<sup>5</sup> *Ibidem*, p. 33.

*meta* constitutional attributions that although beyond the specific clauses of the constitution, were needed to assure the fulfillment of the government aspirations.<sup>6</sup>

The aftertaste of the catching-all presidential institution is still palpable in the legal framework of Mexico, not to say in the common practices. For instance, constitutional clauses have tricky procedures that assure the President maintaining the power, when it comes to nominee and appoint a ternary for Supreme Court justices or the Attorney General. Also, article 73.C of the constitution provides to the executive with an attribution to reject law proposals. In this case, the piece of legislation rejected returns to the original chamber and a higher threshold of votes in the Congress is needed for passing the same piece of legislation once again.

However, the Congress has acquired power in order to play a protagonist role in the public arena. Before 1977, Mexican democracy was inexistent and the single party system determined public life. PRI party (Partido Revolucionario Institucional) held control of all branches of government into the three levels of public action in the federal structure: federal, state and municipal scopes. Not in vain that period was baptized as a perfect dictatorship,<sup>7</sup> because externally appeared as a democracy that changed the head of the executive through periodic elections, although in reality there were no real and political opposition.

Between 1977 and 1994, Mexican democracy started to build its own legal framework and institutional structures in order to open the public sphere. Gradually, there were an increase of political forces, the number of seats at both chambers of Congress had a heterogeneous repartition among different ideologies, and states' elections for Governors started to be gained by opposition parties.<sup>8</sup>

After 1994, institutional model initiated with a discussion on ideas for public accountability and balances. Institutions started to put them in practice thereof. By that year, Supreme Court underwent a deep reform that reduced the number of justices from 26 to 11, eliminated their administrative tasks —such as the appointment of federal judges and repartition of judicial budget—, and maximized its competences for ruling on abstract control of constitutionality of the norms and solving conflicts between branches of power or public organs.<sup>9</sup> Also, the Council of Judiciary was created in order to be in charge of crucial administrative and budgetary tasks, such as the nomination, supervision and discipline of federal judges, or the creation of new courts.<sup>10</sup>

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<sup>6</sup> Serrano Migallón, Fernando, *Facultades metaconstitucionales del Poder Ejecutivo en México*, UNAM, 2006.

<sup>7</sup> Vargas Llosa, Mario, “La dictadura perfecta”, *El País*, 1<sup>st</sup> June, 1992.

<sup>8</sup> Woldenberg, José, *Historia mínima de la transición democrática en México*, El Colegio de México, México, 2012, p. 150.

<sup>9</sup> Orozco Henríquez, José de Jesús, “La Suprema Corte de Justicia de la Nación a partir de 1995 y el nuevo orden constitucional”, *Anuario Iberoamericano de Justicia Constitucional*, núm. 10, Madrid, 2006, pp. 281 a 302.

<sup>10</sup> Esquinca Muñoa, César, *Consejo de la Judicatura. Experiencia mexicana*, Porrúa, México, 2010, pp. 319 to 323.

Despite the lack of a protagonist role played by the Congress, it started a negotiation process with executive in order to pass new pieces of legislation. A vertiginous number of constitutional reforms can be seen after 1994. This is explained by the Mexican tradition of amending legal framework insofar there is a constitutional reform. After proclaiming in the constitution the new contents that politicians want to implement, secondary legislation is passed.

The 1917 constitution suffers from a hyper-amending pathology that has dramatically changed its content.<sup>11</sup> Since its promulgation in 1917 until 9 August 2019, the document has been amended by 239 decrees that have modified the articles of the constitution 739 times.<sup>12</sup> This huge number of amendments reveals the volatility of the Mexican *magna carta*. The original constitution that arose as an outcome of the revolution conflict had just 21000 words, whereas the current document has gone way forward.

This enormous quantity of amendments is also explained by an increase of the participation of legislative branch in public arena, since it is the sein of the constitutional reforms. Paradoxically, the more fragmented Mexican Congress has been, the more frequent constitutional amendments are approved.<sup>13</sup>

Mexico is far away for being governed by a congressional system.<sup>14</sup> In reality it is leaded by political parties that agglutinate power, and nowadays by the high leadership and popularity of President López Obrador. At this point, tools of congressional oversight are useful for understand and measure the real power that institutions exercise.

The pertinence of analyzing congresses respond to a legitimacy issue. Through elected parliamentarians sovereignty is exercised and legislative branch is able to define the scope of competences for the others branches of government, in such a way that their competences are maximized or restricted, depending on the will of congressmen.<sup>15</sup>

It is important to underline that among the tools for parliamentary control in Mexico, there are no attributions for dissolving government not to call for new elections. In fact, tools for government accountability use to lie under an exaggeration of debates and the effective call for responsibilities remain in a second place, merely for media impact or for the negotiation of political scenarios.

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<sup>11</sup> Orozco Pulido, Jesús Manuel, “Drafting a constitution is not drafting a statute. An analysis of the Mexican Constitution and hyper-amending pathologies from the legislative drafting perspective”, *Mexican Law Review*, vol. XIII, number 1, UNAM, 2020.

<sup>12</sup> Data obtained from the Mexican chamber of Deputies, where Mexican constitution is published with all its reforms (22 November, 2019, 10:00 AM), <http://www.diputados.gob.mx/LeyesBiblio/index.htm>. Also, it is considered the counting made in Fix Fierro, Héctor, *Constitución Política de los Estados Unidos Mexicanos. Texto reordenado y consolidado*, UNAM, México, 2016.

<sup>13</sup> Rivera Mauro, “Understanding Constitutional Amendments in Mexico: Perpetuum Mobile Constitution”, in *Mexican Law Review*, vol. IX., UNAM, 2017.

<sup>14</sup> Woodrow, Wilson, *Congressional government. A Study in American Politics*, Houghton Mifflin Company, Boston, 1885.

<sup>15</sup> Verpeaux, Michel, *op. cit.*, p. 330.



However, in practice those mechanisms are scarcely triggered, and when used, the results have no effect in juridical terms, but only in public opinion. We could say that Mexican Congress is not implementing its competences for checking or controlling other institutions, particularly the President. Insofar the Congress does not generate conflicts with other bodies of power, it will remain absent of control from other branches too.

The truth of the matters is that Congress have few tools for exercising a real, effective control over other branches of government. However, the attributions that are seek in the constitution for both chambers are crucial. For instance, the chamber of Deputies holds the competence to approve the annual State's budget. Meanwhile the Senate appoints public servants in key bodies, so the hand of political parties have strong participation on institutional dynamics. Moreover, via the augmentation of the federal competence to pass legislation on a wide variety of topics, exhaustively enlisted in article 73 of the constitution, the Congress plays a key role in federal and subnational institutions.

It is true that a weak Congress incentivize a strong President, especially in Latin America, where mutual control is absent. Article 73 of the constitution establishes a set of competences that are conferred to the Congress, whereas article 74 grants to the Congress exclusive attributions to make governmental institutions accountable for the incomes and expenditures, so as the Congress implements activities as a court of auditors. Also, the Senate has the exclusive attribution to ratify international treaties signed by the President or to confirm the appointments made by him for certain vacancies of high public servants. This means that the high chamber keeps a control on international policy and serves as a filter for allocating public officials that serve in key positions.

A political tool is the so called *juicio politico* or impeachment, that is triggered against high officials when by their behaviors or omissions affect fundamental public interests, according to article 109.1 of the constitution. Indeed, the causes of damage to fundamental public interests are not sufficiently enlisted on the constitution, so a secondary norm specifies the content of the abstract causes for impeachment.

The Federal Act on responsibilities of public servants, specifies the meaning and scope of the conducts that affect fundamental public interests, such as: attacks to democratic institutions; attacks to the form of government, which is republican, representative and federal; violations to human rights; attacks to the freedom of suffrage; usurpation of attributions; any infraction to the constitution or federal acts, that severely affect the Federation, the states or the society, or provokes transformations in the functioning of institutions; severe omissions that affect the same scope as the previous hypothesis; systematic or severe violations to the plans, programs and budgets of the public

administration. It is important to note that the impeachment cannot be initiated for the expression of ideas.

It can be observed how vague and diffuse the causes of impeachment are, because they are referred to abstract, profound contents. Vagueness is a normative defect that limits the effectiveness of law, because it does not provide the legal user with elements that leads him to properly apply the norm. Whereas there is no elements to comply a norm, the effective, real application of the rule becomes banal. Also, vagueness is a defect on norms related with punishments or sanctions because it leaves the subject of the norm under the umbrella of indetermination, which directly attacks the principle *nulla poena sine lege*.

The fact that the causes of impeachment are not neatly defined in an act, is not casual at all. A double purpose can be observed, because a vague act is difficult to be applied, since the body in charge of the implementation of the law cannot see in what factual circumstances the norm should be applied. So a first purpose of this vagueness is to obstruct the implementation of the norm. Impeachments without certainty are nothing more than a normative luxe, lacking of real chances to turn into a real call for responsibilities. However, a second purpose can be observed, since the lack of preciseness provides the congress with a high degree of appreciation in order to apply this magnanimous consequence to political enemies.

For example, the violation to human rights are enlisted as one of the causes of attack to fundamental public interests. However, Mexican institutions lack of a culture to effectively respect human rights, and no impeachment have been conducted for this reason. Mexico has received observations from international bodies that urges the country to respect and protect human rights of specific sectors, such as immigrants or journalists, or to prevent systematic infringements to human rights in the scope of the access to justice.<sup>16</sup>

The most primitive human right is the protection to life, but Mexico shows scandalous degrees of murders and outrages to human life, mostly perpetrated during the struggle against drug cartels that initiated in 2006 and that has provoked until 2019 more than 200,000 deaths. Again, no public servant has ever responded for this lack of commitment with life of citizens, so political responsibility is an issue that regrettably has been scarcely explored in Mexican constitutionalism.

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<sup>16</sup> *Cfr.* in the case of immigrants, Aikin, Olga, “Crisis de derechos humanos de las personas migrantes en tránsito por México: redes y presión transnacional”, *Foro Internacional*, vol. 53, num. 1, 2013, pp. 143 to 181.

### 3. JUDICIARY AND DEMOCRACY

By taking a look on daily newspapers, one could find enormous references to judicial issues. Judges have suspended or annulled rules that are crucial for political plans, or the imputations of high officials create a new *status quo* in the public life that either ejects or augments the popularity of politicians.

In a perfectly theorized idea of tripartite power distribution in a Montesquieu's view, there is always one branch of government that holds a higher degree of competences or plays a protagonist role.<sup>17</sup> A branch of power always tries to expand its performance, so the other ramifications of the State are called to maintain an equilibrium.

Following Loewenstein, instead of discussing about a formal separation of powers, it is useful to construct an argument around the idea of a policy that is at the same time determined, executed and controlled within the same branch or agency of the State.<sup>18</sup>

The virtue and good will when exercising power is neither natural nor spontaneous. The efficiency of authorities is triggered by a legal framework that creates conditions for a good performing and at the same time it foresees punishment when public servants infringe the public trust. In fact, constitutional courts respond to the deficit of equilibrium among the three branches of government.<sup>19</sup>

Political science and constitutional law scholars have developed the theory of checks and balances in order to prevent much more harm that it would be without any counterpart to governmental officials.

Judges play a key role in democracy because they are in charge of maintaining the respect for the constitution and legality, in governmental acts and in private interactions. According to Cappelletti, the presence of judges in public life has increased in recent years, because of two main causes.<sup>20</sup> On the one hand, a worrisome increase of normative acts and reforms that specify all aspects of social relations and even technical life. In roughly 200 years we have evolved from a unique, catching all code in Napoleon's Empire, to an abrupt, huge variety of laws that specify different aspects of modern life. Then, the participation of judges in public life is evident because they define what the meaning of law is and verify its degrees of validity and application.

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<sup>17</sup> Álvarez Gendini, Sabino, *La independencia del Poder Judicial*, Instituto de Estudios Políticos, Madrid, 1965, pp. 42 to 52.

<sup>18</sup> Loewenstein, Karl, *Teoría de la Constitución*, trad. Alfredo Gallego, 2ª ed., Ariel, Barcelona, 1976, p. 62.

<sup>19</sup> *Ídem*.

<sup>20</sup> Cappelletti, Mauro, *La responsabilidad de los jueces*, JUS Fundación para la Investigación de las Ciencias Jurídicas, La Plata, 1988, pp. 34 to 36.

On the other hand, almost all constitutions contain a bill of rights that allocates individual and collective prerogatives to citizens. Constitutions have been reformed in order to update the bill of rights and allocate the so-called third generation rights, which compromise social and economic prerogatives. This has provoked an enormous activism of judges, who try to create new standards of living to people or at least to trigger a social debate on controversial issues.

The participation of judges in public issues is not new at all and make us take a sight back to 1610, when the judge Edward Coke ruled the first sentence of judicial review over a crown resolution that allowed to a college of physicians to arrest its members. This competence was considered against the principles of common law and was rejected in the case.<sup>21</sup>

Across the Atlantic the renowned precedent *Marbury vs. Madison* consolidated the doctrine of judicial review, which is a cornerstone in common law tradition.<sup>22</sup> In the same wave, Latin America also experimented judicial activism and there are precedents that show how brave, reflexive judges have controlled abuses perpetrated on citizens.<sup>23</sup>

Deep inside, the willingness of judges to actively participate in defining public issues is crucial and can be understood as a way on which they build their own legitimacy. A judge is not directly elected by citizens through the vote, and regularly it is expected to be an elite of well-prepared, wise people who solve problems through legal decisions.

On a certain way, the fact that the demand of constitutionality comes from citizens' causes and not by political class processes, contributes to understand the independence of judiciary. Ruling about a specific act is not a political aspiration triggered by the court itself, but it is a reply given to an individual claim.<sup>24</sup>

#### **4. CONTROL OF JUDGES INSIDE JUDICIARY**

Mexican federalism has an effect on judiciary so two scopes of power cohabit: the federal and the subnational. For this reason there are federal and subnational judges who exercise exclusive jurisdiction in certain issues, although sometimes their functions overlap.

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<sup>21</sup> González Oropeza, Manuel, *Constitución y derechos humanos. Orígenes del control jurisdiccional*, 2ª ed., Porrúa-CNDH, México, 2009, pp. 11 to 33; Cappelletti, Mauro, *El control judicial de la constitucionalidad de las leyes en el derecho comparado*, UNAM, México, 1966, pp. 28 to 31.

<sup>22</sup> Carbonell, Miguel, "Marbury versus Madison: regreso a la leyenda", *Lex, Difusión y análisis*, núm. 120, México, 2005, pp. 66 to 73.

<sup>23</sup> Botero Bernal, Andrés, "Matizando el discurso eurocéntrico sobre la interpretación constitucional en América Latina", *Interpretación jurisprudencial. Memorias del II Simposio Internacional de Jurisprudencia*, SCJN, México, 2010, pp. 129 to 131.

<sup>24</sup> Roa Roa, Jorge, "La independencia de la Corte Constitucional de Colombia y la acción pública de constitucionalidad", en Solanes, Joan (coord.), *Independencia judicial y estado constitucional. El estatuto de los jueces*, Tirant lo Blanch, Valencia, 2016, pp. 81 to 110.

In terms of the branch of law applied, subnational courts have competence to deal with cases on criminal, family, civil, commercial and administrative law —although in commercial law both federal and subnational judges have competence for those trials, depending on the decision of the parties—. However, if a federal interest is involved in the case —such as the assets of federal agencies or criminal offenses relating with federal officials—, the federal jurisdiction absorbs the issue.

The truth of the matter is that federal courts always conduct a review on the work conducted by subnational judges, through the writ of *amparo directo*, which functions as a cassation.<sup>25</sup> This phenomena explain why subnational jurisdiction is weak and holds few chances to control power in a local sphere. At the end of the day, no ruling on subnational jurisdiction has definite, terminal effects, because it is subject to further revision by federal courts.

Institutional models of discipline for judges of both jurisdictions, federal and subnational, are basically the same. Legislation tackling the issue of making judges responsible for their acts or omissions, have similar contents. This system of sanctions is in charge of the Council of Judiciary, and mostly is applied to administrative infractions made by judges.

There are different kinds of behaviors that are subject to a punishment inside judiciary. Normative hypothesis established on article 131 Federal Act on Judiciary set a list of behaviors that provoke a damage to the judicial institution or to the personal impartiality or dignity of judges. For example, being notably neglected when ruling a case, deciding on cases where there is a direct relationship between the counterparts and the judge, disobeying the rulings of superior courts, or interfering on judicial cases that are not under his competence.

The typology of sanctions that are imposed are various. One can find economic fines, suspension of the functions, destitution of the position, or the inhabilitation for being a public servant during a certain period of time. Evidently, when individualizing the sanction there are elements to be analyzed, as the severity and periodicity of the behavior or the context of the fault. Once the conduct is specifically analyzed, the type of sanction is fixed inside the boundaries of legal framework.

The competence of the organ that imposes the sanction is fixed in law, following a hierarchical criterion. On the federal scope, the plenary of the Supreme Court imposes sanctions to the justices; the president of the Supreme Court sanctions the officials working for the court; the plenary of the Council of Judiciary sanctions the federal judges and the members of judiciary.

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<sup>25</sup> Trejo Osornio, Luis Alberto, *El jurista persa visita México*, Tribunal Electoral del Poder Judicial de la Federación, México, 2014.

The criteria for imposing the sanctions is that the immediate, higher organ imposes discipline on its subordinates. This system based on hierarchy contributes to fortify the legitimacy and power of judicial institutions, because it keeps the control over public servants inside the boundaries of the same branch of government, preventing the interference of other bodies that might seek to pressure or control judiciary.

This phenomenon has provoked that the Supreme Court is a well-recognized institution in Mexico that historically has had few intromissions or encounters with other bodies of power. Also, few justices have been subject to sanction, since probity of its members is widely proven. The most recent intromission took place in 1994, when the number of justices decreased from 26 to 11, and brand new members were appointed as justices by President Zedillo.<sup>26</sup> However, a breaking point took place on October 2019 by the unexpected renounce of the justice Medina Mora, due to his unexplainable international banking maneuvers.

From a procedural viewpoint, the sanction process inside judiciary initiates by a complaint posed by any citizen, the Attorney General, or even initiated *ex officio*. The due process of law and the principle of contradiction are spread in the process, because the public servant has the possibility to offer and practice proofs. After a hearing period, the final resolution is ruled, which is not definitive because it is subject to a judicial review.

The judicial review is implemented by the Supreme Court, so the higher jurisdiction holds the last word on removals of federal judges. The existence of a judicial review is a notable trait in the system inside judiciary, because when it comes to the impeachment there are no legal remedies to challenge the political judgment issued by the Senate.

As we can see, legal framework sets a system on which judges are subject to discipline measures. This norms represent an indirect way that Congress has in order to interfere in the sanction of judges, because any variation on legal framework has an impact in the discipline system.

Positive law is elaborated and tends to be exhaustive, so is crucial that minimum conditions of certainty are posed in law. Margin of appreciation should emerge after a minimum of operative conditions are set in law, as the behaviors that are subject to sanctions, procedural criterion or the bodies that exercise the jurisdiction when imposing the punishments.

Nonetheless, when legal framework lacks of certainty, it is easy to be arbitrary because there are no control measures that assure an adequate compliance of the rules. This is one of the important critics made in the impeachment against judges, because normative description of behaviors that are subject to sanctions are vague.

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<sup>26</sup> Orozco Henríquez, José de Jesús, “La Suprema Corte de Justicia de la Nación a partir de 1995 y el nuevo orden constitucional”, *op. cit.*

The following section explains the structure of the impeachment as a tool of congressional oversight that allows sanctioning high public officials, including the members of judiciary.

## 5. IMPEACHMENT OR *JUICIO POLITICO* IN MEXICO.

Political accusation is a tool of parliamentary oversight that seeks to control government. Besides the norms´ approval, the notion of political responsibility and accountability set the general framework of parliaments. In an extended way, almost every activity of the parliament implies a control on certain activities of the institutions. A relevant function of parliaments, besides the obvious lawmaking, is to control the performance of State institutions, as an expression of the check and balances.<sup>27</sup>

Constitutional law is devoted to figure out ways to control the excesses committed by public servants. Indeed, political responsibility is an abstract concept that is linked with the question of legitimacy of the body that will impose the sanction. The basic aim of the impeachment is to maintain a political control when public servants defeat constitutional principles. We can discuss about a tool for the organic defense of the constitution, because the impeachment arises when structural faults are committed.

Constitutionalism is in the core of juridical science of XXI century. Scholars have sufficiently discussed about the meaning and relevance of the constitution as a tool for guarantee a control of power. A constitution is the cornerstone of the legal system. It settles the State, determines the validity of the legal system, proclaims fundamental rights that are entitled to the citizens, and provides framework for the exercise and control of power.<sup>28</sup>

On XX century, constitutional texts had a period of somnolence, because its contents were not observed.<sup>29</sup> The power was basically conducted by dictatorial or monarchical regimes, which absorbed all the competences without any counterbalance. However, nowadays juridical science has stressed on the importance of constitutionalism, because of its practical implications. Paradoxically into a constitution coexist both, the past and the future.<sup>30</sup> The past, because in constitutional principles the basic elements of institutions and human rights are petrified. The future has a special

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<sup>27</sup> García Roca, Javier, “La función parlamentaria de control a caballo de parlamentarismo y presidencialismo”, *op. cit.*

<sup>28</sup> García de Enterría, Eduardo, *La Constitución como norma y el tribunal constitucional*, Civitas, Madrid, 1983, p. 49.

<sup>29</sup> Varela, Joaquín, “La dimesion historique du constitutionalisme. Entretien avec le professeur Michel Troper”, *Revista Electrónica de Historia Constitucional*, núm. 7, 2006, pp. 339 to 358.

<sup>30</sup> Zagrebelsky, Gustavo, *Historia y constitución*, Trotta, Madrid, 2005, p. 91.

constitutional relevance because aspirational actions are enshrined. This is why a constitution is a constant object to study, so theoretical and practical approaches are always pertinent.

A constitutional question posed in this research is related to a constitutional tool that is conferred to Mexican Congress in order to sanction judges. In Mexico, the constitutional impeachment is named *juicio político*, which is a real accusation that congress implements through its two chambers. The deputies acting as the accusation entity, and the senators becoming a jury that rules the case.

A critic to the impeachment is that among the high public officials that could be sanctioned, we can find Supreme Court justices and federal judges. Articles 109 and 110 Mexican Constitution establish that federal magistrates and judges are subject to constitutional accusation when they affect the fundamental public interests or they affect their proper exercise.

Distinguishing between magistrates and judges is needed. A magistrate is the public servant in charge of a circuit court and represent a second instance in the procedure. A judge, however, holds the first instance in the judicial chain. This is the typical ramification of circuit appeal courts and district courts of USA, applied in Mexico.

As established before, the causes of political responsibility set in the constitution are open, vague dispositions, so it might be thought that reglamentary norms could tighten the behaviors that provoke a constitutional failure. Nonetheless, the Federal Act on responsibilities of public servants, which is the secondary legislation that develops the normative approach of the impeachment, does not contribute to clarify the vagueness. Again, the causes of political responsibility are abstract, general ideas that are difficult to identify on a particular case. Real cases have a confluence of behaviors, legal framework and facts that might determine a possible constitutional accusation. In this sense, reglamentary rules do not help addressees to get a clear legal solution.

Political responsibility of public servants is an antique issue. Reminiscences of impeachment procedures can be found in England at 1376 within the House of Lords, during the kingdom of Edward III, in cases that made accountable the private counselor of the king. The *quid* of the impeachment is to create a political response for the acts of those individuals who are in charge of political power. The procedural relationship is not a criminal or civil response for individual behaviors, but an axiological consequence for the inobservance of public principles.<sup>31</sup>

Mexican constitution adopted a system of political responsibility for punishing high officials due to irregular conducts in the public service. Severe misconducts of public officials are investigated and ruled by the two chambers of the Congress in a procedure that has jurisdictional traits. It starts by a written request, so a plea triggers the procedure. Due process of law appears,

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<sup>31</sup> Esparza Frausto, Abelardo, *El Juicio Político*, Cuadernos de la Judicatura, México, 2001, p. 38.



because the public servant is granted with the opportunity to argue and offer relevant proofs for his defense. Also a fair hearing is conferred to the subject of the impeachment. Finally, the procedure ends up with a resolution determining whether or not there is a political responsibility committed by the public official.

The complete procedure has two instances that are neatly divided on the two chambers of federal Congress. The chamber of Deputies conducts the instruction, receiving the written request against the public servant, practicing relevant proofs, hearing the defendant, and preparing the accusation. Then, the Senate solves the issue with a final, definitive resolution, so the plenary of senators performs as a jury that rules on the accusation. By this point the impeachment is materialized and there is no a review that allows a second analysis. Without any remedy for challenging the decision, the resolution of the Senate becomes definitive.

This is a notable difference with the system for sanctioning judges inside judiciary, where there is a possibility for a second review of the case, which is strictly jurisdictional. Meanwhile in the constitutional accusation there are no controls on the resolution issued by the Senate.

For this trait, the impeachment is a constitutional procedure that is an exception to the well spread principle that the final layer for juridical decision yields on a jurisdictional body, usually the constitutional court.<sup>32</sup> A serious critic can be constructed in this point because the pragmatic integration of the Senate is not the best example of capability to solve such a sensitive issue.

In regards the subject of the impeachment, article 110 Mexican Constitution sets a list of certain categories of high positioned public servants who can be subject to the an impeachment: senators and deputies; Supreme Court's justices; counselors of judiciary; secretaries of the State; the attorney general; federal magistrates or judges; the President, counselors and the executive secretary of the Electoral Institute; magistrates of the electoral jurisdiction; members of constitutional autonomous entities; directors or those with an equivalent position in the decentralized entities or in State companies. Also, the federal impeachment goes beyond the federal public officials, because governors, deputies, magistrates, counselors of judiciary, and members of autonomous entities in the subnational constitutions, are also subject to this constitutional accusation.

It seems that the impeachment, when implemented against public servants belonging to judiciary —such as Supreme Court's justices, and federal magistrates or judges—, is an illegitimate infringement to the principles of judicial independence and separation of powers. Thus it is urgent

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<sup>32</sup> Rubio Llorente, Francisco, “Ídolos judiciales”, *El País*, 10 March 1997; Carbonell, Miguel, “Jueces universales”, *La construcción de la democracia constitucional*, Porrúa, México, 2005, pp. 169 to 171.

to conduct a constitutional amendment in order to derogate this clause, because it might become a serious problem that affects the institutional balance in Mexico.

It is true that impeachment against Supreme Court justices and federal magistrates or judges, is not frequent at all, for not saying that it has never occurred—in fact, there are no factual works on this issue, due to the few usage of this tool—. However, the fact that constitution enshrines illegitimate invasions for the principle of judiciary independence is dangerous. At any unsuspecting moment an impeachment procedure could be triggered following a political strategy, or it might be used as a tool for political revenge.

A constitution must reflect the basic principles of the institutional machinery, so it is naïve to establish tricky clauses that might interfere with the normal functioning of judiciary. This is why it is important to refine a constitution, erasing illegitimate clauses that might be used for an evident abdication of the judicial independence.

It is crucial that big, important institutions such as the Supreme Court, remain powerful and unbreakable in order to face any constitutional crisis due to a deviation of power. When needed, strong institutions formed by brave public servants, are the last backstop that contain the chaos.

Political accusations are triggered by an absolute majority of the deputies participating in the session, who are going to incriminate the public servant before the Senate. Then, the upper chamber has to decide, by a qualified majority of two thirds of the members of the chamber participating in the session, if the accusation has merits to be upheld. The consequence is the destitution of the public servant and the inability to participate in public positions.

Some critics have to be highlighted. The first, the lack of juridical training of the senators, who are going to rule on a case, give a specific value to proofs and apply juridical norms over a factual situation—which is a tough, complicated task—. An upper chamber is not a court that has sufficient knowledge and preparation to apply norms into a process, because that function corresponds to judges. It is certainly a problem to give the trust to Senators to rule on a specific case lacking of expertise.

Secondly, specific conducts that provoke a political accusations are not defined neither in the constitution nor in secondary acts. Uncertainty remains because no one is able to understand until which degree the Congress can mobilize a political accusation against the Supreme Court justices or federal judges. Empty norms can be discretionally filled out by politicians, which is dangerous.

It is true that the models of constitutional accusation around the world are not commonly used. For instance, in United States only 4 judges have been dismissed and in Germany the *richteranklage* has never been implemented.<sup>33</sup> No matter the scarce usage of this tool, it is crucial to find certainty

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<sup>33</sup> Cappelletti, Mauro, *La responsabilidad de los jueces*, op. cit., p. 48.

in law so as to know until which degree a member of judiciary can be accused for having betrayed constitutional principles. It is needed to be descriptive in the norms in order to specify which behaviors or omissions bring a political liability before the congress.

A third critique to the model comes with the fact that the decision whether a Supreme Court justice or a federal judge has violated the constitution, lies under the umbrella of the political judgment of congressmen. There should be legal means in which judiciary decides within its members the constitutional charges of its own high public officials. It is desirable to reject any interference of politicians that look for an invasion of judicial independence. The fact that judges are independent and without fear of consequences for their autonomous decisions is a *sine qua non* step for reaching an objective, material justice.

Some comparative methods could be emulated from Argentina or Spain. Article 115 Argentinian Constitution states that judges are accountable before a special jury integrated by members of the parliament, magistrates and bars of attorneys. A tripartite integration of the body that imposes political sanctions to judges guarantees a complete dialog and understanding between all the parties involved on justice field. A repartition of power implies that any institutional body holds the complete attribution to eject a judge claiming a vague, undetermined political failure. This procedure enshrines a real separation of power, because different political actors must have a dialogue in order to take a decision.<sup>34</sup>

In Spain article 122.2 of the constitution provides to the General Council of Judiciary with the attribution to impose sanctions or discipline measures to judges. The point is that judges should not be blatantly irresponsible for their behaviors or omissions. However they should respond before a body inside judiciary that shows reasonable merits and legitimacy to implement disciplinary methods on its members.

Historical references are useful to explain that the sole decision for sanctioning a judge should not be exclusively conferred to the parliament. Controlling judges is a need that has historic backgrounds, since judiciary plays a key role in the counterbalance of power. For instance, Cadiz Constitution of 1812, which is a landmark in the history of constitutionalism, established a procedure on which judges were accountable before the king. Article 253 of this historical piece that influenced Iberia-American nations, foresaw that when the king received a complaint against a judge, a fair hearing was granted to him, and the Supreme Court ruled the final decision. This point is crucial, because no matter the king leaded the monarchy as the head of the State, judiciary

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<sup>34</sup> Sabsay, Daniel, "El juicio político a la Corte Suprema en la República Argentina", *Anuario Iberoamericano de Justicia Constitucional*, num. 8, 2004, pp. 493 to 519.

remained with the competence to examine accusations against its members and impose disciplinary measures.

The *ratio* of this norm is that judges have sufficient capacity to analyze until what degree one of its members deviates power or breaks constitutional compromises. It is not a political body that decides on the admission, practices the proofs or analyzes the grounds of the behaviors. Judges have enough expertise to do so and they must decide those cases.

The core question is not to argue that judges must be outside the control of any power. Judicial independence should not be understood as a guarantee of impunity that through normative labyrinths disguises as legal different illegitimate activities made by judges.

For instance, constitutional accusation could be triggered by different legitimate institutions, such as the members of Congress or the head of the executive. But the procedure and the decision must be taken by a judicial body. This is the only way in which judicial independence is assured as a core principle of the political system, avoiding any external interference.

In Mexico there are no precedents of dismissals of Supreme Court justices made by the Congress after an impeachment. However, the nuclear bomb is already installed in article 110 of the constitution for being used when political philiars emerge or for punishing a court that has no coincidence with the Executive.

Daily and real interactions show that Supreme Court justices are isolated of any accountability tool. It is an organ disconnected with the democratic needs of the country,<sup>35</sup> and there should be more tools for making judges accountable. Tools that, indeed, should not yield on the sphere of political accusations because of the vagueness of the term. Rather, judges should respond for administrative, civil or even criminal liability within its own branch of power with sufficient and active participation of other political actors.

One thing is judging cases without any fear of external pressures, and another brand different is solving cases outside legal framework under the pretext of judicial independence. A blatant misuse of law must be subject to responsibility and judges must respond for it.

It is notable to say that article 9 of the General Act on administrative responsibilities, establishes that the responsibility of judiciary remains inside this branch of power, although the Congress has an effective way to interfere through the Superior Auditory, in order to check the efficiency and legality of the expenditures or budgetary issues.

This norm seems to ratify the idea of the isolation of judiciary from external interferences, because administrative responsibility is kept inside this branch of power. Nonetheless, Mexican constitution provides a system for sanctioning members of judiciary when they fail on vague

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<sup>35</sup> Magaloni, Ana Laura, "El ciudadano olvidado", *Corte, jueces y política*, Fontamara, Mexico, 2007, pp. 111 to 120.

constitutional compromises, which represents a congressional oversight tool that is ready to be used insofar there is a good context according to political criteria.

Besides this legal, normative analysis, there is a factual regard that must be highlighted. Councils of judiciary were created in order to deal with the balance of power,<sup>36</sup> but those councils on subnational states have a notorious political conformation, because its members are directly appointed by states' governors.

Further research should be conducted in order to verify with factual data until which degree tools of congressional oversight have been applied on judges in subnational states. Mexico has built a political system in which governors absorb enormous quotas of power, determine the path of elections, and control legislative and judicial branches on their states. At a subnational level it is common to apply constitutional accusations against judges as a political revenge, so as to punish those judges that have no discipline nor reverence with governors or powerful majors.

Judicial independence has to be rebuilt constantly. It is an ideal that has no limits and is reconstructed throughout the time by strong, brave judgments. Some steps should be taken. There should be a serious, long-term policy that establishes judicial career in Mexico. It is crucial to create transparent, open procedures in which judges arise in public arena and start to climb to higher positions. Indeed judicial career assures the independence of decision among judges, so it is regrettable that Mexico lacks of a strong judicial career that allows the development or the professionalization of judges, especially those who serve in subnational states.

## 6. PROCEDURAL TRAITS OF THE IMPEACHMENT

The impeachment finds a normative narrative in the Federal Act of responsibilities of public servants, so articles 9 to 29 regulate the specific traits of the constitutional accusation. A written request is delivered to the chamber of Deputies, which has to be ratified by the petitioner. After some procedural requirements are fulfilled —such as the ratification of the request and the exhibition of proofs that *prima facie* reveals the liability of the public official—, the request is transferred to the congressional committees of constitutional issues and justice, in order to decide on the admission. A special commission formed by 12 deputies who are members of those congressional committees, has to conduct the instruction of the accusation.

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<sup>36</sup> Bandrés, José Manuel, “Constitución, Parlamento y Poder Judicial”, *Parlamento y Poder Judicial*, Consejo General del Poder Judicial, Madrid, 2006, pp. 11 to 28.

At this point, the response of the accused public official is received and the proofs for his defense are admitted. During a 30 days period, the case is open for the practice of the proofs, after which the final plea of the public servant is delivered. Once the procedure is finished, the plenary of the chamber of Deputies has to decide, by an absolute majority of the members participating in the session, whether or not the accusation against the public official has grounds. If reasons of liability are found, the deputies act as a body of accusation, so the chamber sends the case to the Senate. A deputy is commissioned to represent the interests of the chamber of Deputies before the Senate.

Within the Senate another brief procedure initiates, and a fair hearing to the public official is granted as well. There is a prerogative to propose arguments for the defense, within a public hearing on which the public official reads the final plea once again. The deputy that was commissioned by the lower chamber has to ratify the accusation before the Senate. Finally, senators assume the composition of a jury and issue a judgment on the facts and the grounds of the case, deciding if there is a constitutional responsibility of the accused public official. A qualified majority of two thirds of the senators participating in the session is needed in order to declare that the impeachment is uphold.

It is important to underline that the one and only kind of sanction that can be imposed to the public official is the destitution from the public service and a permanent in-habilitation to exercise another public employment during a certain period of time.

From a procedural viewpoint, there are voices that claim for a better restructuration of the rules of majority on impeachment procedures. It is also urgent to create legislation on the topics related with formal proofs and the ways that factual data can be incorporated into the procedure.<sup>37</sup>

Subnational states have their own local constitution, though they are all obliged to observe the guidelines of the federal *magna carta*. Relationship between federal and subnational constitutions is a tough, confusing issue, because the normative power of the national constitution eclipses the effects of the subnational ones. In this regard, impeachment has been installed in the states' constitutions in order to sanction high public servants. Regrettably, impeachment against local judges is also stated in subnational constitutions, for the same vague conducts referred in the federal procedure.

A problematic situation emerges due to the strong, unbreakable power that governors of subnational states actually exercise. Control mechanisms on local congresses have no efficacy, so there are few chances to penetrate in the executive machinery. This provoke that governors control

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<sup>37</sup> Luna Leal, Marisol, "Algunos aspectos de procedimiento del juicio político en México", *Revista Letras Jurídicas*, num. 21, Universidad Veracruzana, México, 2010.

different scopes of government, not only in the executive. They also control political parties, local congresses and judges with jurisdiction in the state.

As argued before, impeachments against judges are frequently used as a tool for imposing pressure on judges in the subnational sphere, so they are maintained under the umbrella of executive instructions.

For instance, in the state of Jalisco during the last decade there have been numerous examples of impeachment against judges. The reasons that have motivated those procedures were corruption or omissions to apply law, mostly in administrative or urbanistic law suits against municipalities. The economic impact of those cases made visible the alleged cases of misapplication of law by judges, so impeachment procedures were initiated as a response for sanctioning those judges which judgments affected the executive branch.

Those impeachments ended up with the destitution of judges, so the result of them were satisfactory in terms of the efficacy for achieving its goals. However, some doubts emerge, for the incapability of the councils of judiciary to make judges accountable inside the judicial branch. As a response for the failure of mechanism from judiciary to exercise a control over its own members, congresses have conducted impeachments in order to generate discipline on judges.

Two further arguments are highlighted for understanding why it is more frequent that subnational judges lay under the umbrella of congressional oversight in the states, rather than in the federation.

On the one hand, the poor system of judicial career has allowed that some vacancies of judges or magistrates are fulfilled by persons who have no commitment with judiciary or lacking enough juridical training. Insofar there are judges who accessed to their position through a strong system of merits and are able to tests their capability on judgments, there will be strong judges capable to resist pressures or interference from other branches of power. In other words, judicial independence is closely related with the ability of judiciary to be integrated by public servants who have struggled to gain their position, which implies a sufficient preparation to face technical problems that are always involved in justice issues.

On the other hand, local judges lack of sufficient power to definitely rule cases that are put under their jurisdiction, because through a writ of *amparo directo* or cassation, federal courts make a review on their resolutions.<sup>38</sup> This phenomena provokes an unwillingness of local judges to struggle with complex cases and an unjustifiable renounce to exhaustively study the submitted cases.

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<sup>38</sup> Cossío Díaz, José Ramón, “El indebido monopolio constitucional-electoral de la Suprema Corte de Justicia”, *Bosquejos constitucionales*, Porrúa, México, 2004.

At the end of the day, a federal court will make a review on their judgments, so the last word and the effort for writing a good quality judgment, is left to further federal courts.

If local judges have weak judicial career and they lack of sufficient jurisdiction to definitively solve cases, it is obvious that their power is no sufficient to resist attacks from another branches of local government. This explains why they are much more vulnerable to impeachments conducted by subnational congresses than federal judges.

Inter-American Court of Human Rights had the opportunity to rule on a case about judicial independence, from the perspective of the destitution of judges due to political maneuvers.<sup>39</sup> The court established some guidelines in order to maintain the isolation of judges from external pressures. It noted that judges must have certainty on their positions, which includes an adequate process of promotion, certainty in the duration of the position, and guarantees against external interferences.<sup>40</sup> It also established that judges should face discipline procedures before a body of the State that holds previous competence for solving those kind of cases, and that specific body must guarantee independence and impartiality. Judges should be fairly heard in the whole accusation process.<sup>41</sup> Nonetheless, any argument was elaborated in regards the organic nature of the agency that should be in charge of the sanction process.

One light in the shadows is the international declaration named *Basic principles on the independence of the judiciary* set by United Nations,<sup>42</sup> which establishes some guidelines to be observed in cases related with discipline, suspension or removal of judges. Relevant parameters such as the right of judges to have a fair hearing or to be sanctioned only by reasons of incapacity or behaviors that unfit their duties.<sup>43</sup> Decisions in these procedures should be subject to an independent review, which guarantees the right to a double filter for such a sensitive consequence.

At this point another defect is stated in Mexican constitution, because on impeachment procedures there are no legal remedies to conduct a review on the final decision issued by the Senate. The fact that impeachments against judges interfere on the judicial independence makes urgent to implement a participation on judges for ruling such cases. Those cases attend to political maneuvers, so the parameter of the judgment is not necessarily juridical, but political. That is why through the writ of *amparo* there are no chances to analyze the validity of impeachments, because the resolution

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<sup>39</sup> Interamerican Court on Human Rights, judgment *Tribunal Constitucional Vs. Perú*, Fondo, Reparaciones y Costas, 31 January 2001, serie C, num. 71.

<sup>40</sup> *Ibidem*, paragraph 75.

<sup>41</sup> *Ibidem*, paragraph 76.

<sup>42</sup> United Nations, 7<sup>th</sup> *Congress on the prevention of crime and the treatment of offenders*, Milan, Italy, from 26 August to 6 September 1985.

<sup>43</sup> *Ibidem*, principles 17 and 18.



is definitive and cannot be challenged, considering the sovereignty of the upper chamber, as stated on arts. 110 of the constitution and 61.VII of the Act on *amparo* trials.

There is also a settled doctrine of the Supreme Court clarifying the canon of analysis on such cases. In a case ruled in 2003, the plenary of the Supreme Court recognized that the fact that judges are subject to impeachment by local congresses is valid, so there is no infringement to judicial independence.<sup>44</sup> One argument that was used to justify this decision is the fact that councils of judiciary are in charge of administrative failures, while congresses sanction relevant political misconducts. In this regard, the administrative failure opens a procedure within judiciary, while constitutional failures —whatever that means— opens the space for the impeachment before the Congress.

In 2004 the plenary of the Supreme Court limited the canon of analysis that holds congresses when sanctioning judges.<sup>45</sup> Pursuing legal certainty, it is not valid that Congress interfere or re-analyze the *ratio decidendi* of cases that were previously solved by judges. If a legislative branch were allowed to conduct a second juridical review of the cases solved by judges, there will be a real invasion to the principle of separation of power. The one and only institutional power capable to solve cases are judges through procedural trials that are seek on law.

The judgments that are issued by high courts are usually cited worldwide, because high courts try to maintain their legitimacy before other branches of power. For instance, India has developed a political system in which the Supreme Court keeps a model for interpreting the constitution, although the Parliament is able to modify its understanding by changing an act that would modify the scope of the ruling made by the Supreme Court.<sup>46</sup> In France there is a well spread culture of judicial self-restraint, because Council of Constitutionality recognizes that within its catalog of competences there are no chances to solve a case that is not specifically regulated in law.<sup>47</sup> Spain grants rulings of the Constitutional Court with *erga omnes* effects that yield effects on all authorities (art. 164 Spanish constitution). In Colombia, once a specific norm has been found unconstitutional, no authority can ever reproduce the contents of the void rules (art. 243 Colombian constitution).

However, the judgments of the Mexicana Supreme Court are way much limited, because they yield effects only on the parties of the process. Also, the binding effects is just for judiciary and not for the rest of authorities, so legislative and executive authorities have no obligation to obey its

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<sup>44</sup> Precedent: P./J. 40/2003, *Semanario Judicial de la Federación y su Gaceta*, Novena Época, tomo XVIII, agosto de 2003, p. 1376.

<sup>45</sup> Precedent: P./J. 55/2004, *Semanario Judicial de la Federación y su Gaceta*, Novena Época, tomo XX, agosto de 2004, p. 1155.

<sup>46</sup> Narain, Yogendra, “Relations between Parliament and The Judiciary”, *Parliament Practices*, New Delhi, 2011, pp. 299 to 304.

<sup>47</sup> Verpeaux, Michel, *Droit constitutionnel francais*, *op. cit.* p. 434.

doctrine. Moreover, it is needed a qualified majority of 8 justices for declaring the unconstitutionality of rules, which is a clear restriction to the jurisdiction of the Court.

## **7. CONCLUSIONS. A DESIRABLE CONSTITUTIONAL AMEND TO DEROGATE THE IMPEACHMENT AGAINST JUDGES.**

A Constitution is supposed to fulfill the basic needs of the State and its inhabitants. Constitutional clauses should be broadly and constantly exercised by its final receivers, the citizens and institutions. When a constitution is only reserved to an elite of politicians, judges and attorneys, the link between people and its fundamental document is broken.

Overloading a constitution with ambitious rights or brand new institutional models that are unreachable, leads to inobservance.<sup>48</sup> Due to a lack of means to meet the requirements, the constitution becomes nothing more than an aspirational document that agglutinates the best yearlings of the State, but it is not considered as a real norm to be fulfilled and which inobservance means an abdication of responsibilities.

If the constitution is merely a symbolic document which clauses and contents are hollow, it becomes dead letter. According to *Latinobarómetro*, Mexico is the country of Latin America region where citizens have the poorest level of attachment with law and people's behavior is guided by their self-consciousness rather than by norms.<sup>49</sup>

Legal philosopher Nino described *anomia* as a predisposition for not respecting norms, showing a lack of interest to fulfill the democratic aspirations that are enclosed in the rule of law.<sup>50</sup> Efficacy of the law, understood as the quality of norms to meet its goals to such a degree that judicial interpretation is not necessary, is been a common, contemporary concern for scholars and policymakers.<sup>51</sup> Plenty of legislation is passed every year in parliaments worldwide and the general situation is not encouraging at all.

According to Jones, the lack of means for communicating the law's message minimize its enforcement.<sup>52</sup> This factor emerges when studying the situation of Mexican constitution, because

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<sup>48</sup> Sartori, Giovanni, *Ingeniería constitucional comparada. Una investigación de estructuras, incentivos y resultados*, 4 ed., Mexico, Fondo de Cultura Económica, 2016, p. 214.

<sup>49</sup> Latinobarómetro, *Informe Latinobarómetro 2018*, (May 26, 2019, 10:00 AM), [https://C:/Users/HP/Downloads/INFORME\\_2018\\_LATINOBAROMETRO.pdf](https://C:/Users/HP/Downloads/INFORME_2018_LATINOBAROMETRO.pdf)

<sup>50</sup> Nino, Carlos, *Un país al margen de la ley*, 2<sup>nd</sup> ed. Ariel, Buenos Aires, 2014, p. 31.

<sup>51</sup> H. Xanthaki, "On Transferability of Legislative Solutions: The Functionality Test", in C. Stefanou (ed.), *Drafting Legislation, A Modern Approach*, Routledge, London, 2016, p. 5.

<sup>52</sup> H. W. Jones, *The Efficacy of the Law*, Northwestern University Press, 1969, pp. 18, 20, 32 and 34.

due to the huge number of amendments it is difficult to know what specific contents are incrustated in the highest norm. Indeed, some arrangements should be made.

Common law tradition has been constructed on the basis of case law, but indeed it is not the only source of law. Statutes passed by parliaments provide the general framework to the users, who have to find proper legal tools in order to face a case. It is usual that legal addressee conducts a paper chase of relevant legal material that provides him with statutory law updated.<sup>53</sup> Parliaments are putting in practice a *consolidation* of legal systems in order to organize in one single document all the rules on a specific area of law. Consolidation means preventing addressees to be lost throughout legal system when trying to find the relevant provisions. This task enables an easier access to justice.<sup>54</sup>

A similar exercise should be emulated in the Mexican context, because it is not clear enough what the structure, contents and political path are in the fundamental norm. In this regard, it is needed to derogate constitutional clauses that are dangerous, because they could imply a deviation of power and lead to a chaotic *status quo* for institutions.

The impeachment against judges should be erased from Mexican constitution. It can turn into an overwhelming impact from Congress to judges, especially to the Supreme Court justices. If a constitutional clause has vicious contents, the chances for deviating power are increased. One step forward strengthening the constitution is to derogate clauses that interfere with such sensitive issues such as the separation of powers or judicial independence.

Mexico has been conducting a debate whether or not creating a new constitution, because original *magna carta* from 1917 has been excessively modified and it has poor effects on daily political life. Constitutional clauses of impeachment against judges should be erased because they interfere with constitutional principles.

The proposal to derogate impeachment against judges should not be read as a claim for making judges unaccountable. Without any doubt, congressional oversight is needed in order to control abuses of power. However, it is needed to enhance the capability of the council of judiciary, both the federal and the subnationals, to solve cases that imply a strong responsibility of judges. This implies an increasing of their competences so as the canon of analysis is broaden to reach a wide variety of responsibilities, thus councils of judiciary are not only focused on administrative failures. It could be even considered the integration of members of legislative or executive branches into disciplinary procedures of judges, with the purpose to increase the legitimacy of the body.

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<sup>53</sup> A. Samuel, "Consolidation: A plea", *Statute Law Review*, Oxford University Press, 2005, p. 59.

<sup>54</sup> P. Rickard-Clarke, "Access to justice: accessibility", *Statute Law Review*, Oxford University Press, 2011, pp. 159 to 164.

However, the complete procedure and resolution of the political responsibility should correspond only to judiciary.

As stated on this research, nowadays the congress issues the final decision on constitutional accusations against judges, in a normative context that lacks of certainty. This scenario is extremely dangerous. An immature democracy such as the Mexican should have a better legal framework in order to prevent the excesses of power. An element that increases the importance of this issue is that nowadays president López Obrador holds enormous legitimacy of public opinion and possesses high presence in both chambers of Congress through the political party he funded, Morena. Since he took office in December 2018, he has directly interacted with Supreme Court, by nominating three out of eleven justices, criticizing the performance of judiciary, or even proposing a new configuration of the court. Briefly, if politicians are looking forward to have a strong presence in the Supreme Court in order to control its members or their judgments, it is crucial to erase those mechanisms that put judicial independence in a dangerous position, such as the impeachment actually does.

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