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Strengthening state constitutionalism from the federal Constitution: the case of Mexico

by

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Abstract

In this essay, the author explores the way in which courts have played an important role in defining the shape of Mexico's federal system and state constitutionalism in that country's emerging multi-party democratic system. Specifically, three developments are examined: a) States' constitutional reforms defining their own catalogues of human rights; b) Decisions of the Federal Electoral Tribunal enforcing the standards established in the federal constitution on how electoral processes have to be organized at state level; and c) Decisions of the Supreme Court enforcing the standards established in the federal constitution that seek to protect independence and autonomy of state judges. These developments illustrate how states have tried to use their sphere of constitutional autonomy in more creative ways, and the way in which interactions between the federal and state normative orders are taking place under the new political context.

Key-words

Federalism, subnational constitutions, constitutionalism, Mexico



1. Introduction

Mexico's federal system is organized in two separate but articulated constitutional levels: federal constitutionalism and state constitutionalism. For the last (almost) 100 years, state constitutionalism has developed within the frame allowed by the federal constitution of 1917. However, federalism and state constitutionalism were weakened for decades by the centralizing logic of the hegemonic party system that existed until 2000.¹ Yet, since the 1970s diverse political forces pushed for a series of constitutional and legal reforms that eventually led to the collapse of the hegemonic party system, and these developments have had an impact on federalism and state constitutionalism. To be more precise, the hegemonic party system had established a series of political practices that produced a centralizing effect on the actual operation of Mexico's federal system, in spite of a constitutional arrangement that allowed state autonomy. A central factor was the circumstance that the president of the Republic was *de facto* the leader of the political party that controlled most seats in both houses of the federal Congress; the vast majority of state's executives; and most seats in state legislatures. Nevertheless, increased liberalisation and democratisation pushed by democratic political forces led to competitive elections and rotation at all levels of government, producing the collapse of the hegemonic party system and its centralizing logic. In turn, this process opened up the opportunity for increased autonomy of state governments vis-à-vis the federal government.

In this essay, I will explain how courts have played an important role in defining the shape of Mexico's federalism and state constitutionalism in the emerging multi-party democratic system. I will focus on three developments: a) States' constitutional reforms defining their own catalogues of human rights; b) Decisions of the Federal Electoral Tribunal enforcing the standards established in the federal constitution on how electoral processes have to be organized at state level; and c) Decisions of the Supreme Court enforcing the standards established in the federal constitution that seek to protect independence and autonomy of state judges. These developments illustrate how states have tried to use their sphere of constitutional autonomy in more creative ways, and the way in which interactions between the federal and state normative orders are taking place under



the new political context. Moreover, the last two developments might seem as an intrusion of the federal constitution into the realm of state constitutions. Nevertheless, it will be argued that they represent an attempt of the national political and judicial processes to strengthen democracy and constitutionalism in states that have lagged behind in terms of these two political values.

2. States' constitutional reforms defining their own catalogues of human rights

I would like to say a brief word on what could be rightly called a new trend in Mexico's constitutionalism, which was made possible by the breakdown of the hegemonic party system. This trend has to do with the revival of state constitutionalism, which basically has been characterised by: a) the emergence of systems for guaranteeing the supremacy of the State constitution; and b) the establishment of human rights catalogues into State constitutions.

Under the hegemonic party system, State constitutionalism was subordinated to national constitutionalism. In other words, constitutional change in the States occurred as a consequence, as a reflex reaction, to changes in the federal Constitution. In contrast, under a multi-party and competitive system, new room for manoeuvre has been created, allowing State political actors to shape their State constitution in original and creative ways, trying to solve and respond to local needs and demands.

This trend was inaugurated by the State of Veracruz in 2000, whose congress reformed its Constitution in order to include a Chapter on Human Rights that anticipates rights not included in the federal Constitution and a clause that incorporates at the State level rights established in international treaties signed by Mexico. In addition, the reform also created procedural mechanisms for the protection of the State constitution: a) the procedure for the protection of human rights (analogous to the federal *amparo*); b) an action of constitutional controversy (to resolve disputes of competences between State branches of government, between the latter and municipal governments, or between municipal governments); c) an action of unconstitutionality (as an abstract mechanism of constitutional review at the State level); and d) an action against legislative omissions (that



seeks to force the State congress to pass a piece of legislation whose omission thus far affects mandates of the Constitution of Veracruz).

The reform was challenged through an action of constitutional controversy filed by several municipalities of Veracruz (controlled by a political party different from that of the governor and of the majority of the State Congress). Yet, the Supreme Court decided that to the extent that the Constitution of Veracruz established human rights that were different from those foreseen in the federal Constitution; and considering that the new mechanisms of constitutional review were intended to guarantee only the rights foreseen in the State constitution, it did not breach the federal Constitution.¹¹

Moreover, in that same case, several Justices of the Supreme Court argued that the national constitution is a floor, and that state constitutions are allowed to establish higher ceilings of rights for individuals.¹²

The Supreme Court's decision in the Veracruz case encouraged other States to follow the same path. However, after a period of intense debate, and relevant efforts of institutional design and normative creativity, the new trend lost momentum, mainly because of the influence exercised by an older trend that has characterised Mexico's legal and justice system: the all absorbing federal writ of *amparo*, by which State courts' decisions derived from the new procedures, started to be reviewed by federal courts. Why should plaintiffs resort to State judicial review procedures, if the decisions rendered at this level could be later reviewed by federal courts through the writ of *amparo*?

Finally, it is important to note that as Mexico's legal community was discussing these issues, a series of developments changed radically the terms and coordinates of the debate. I am referring to: a) the influence of a series of judgments of the Inter-American Court of Human Rights and specifically its doctrine of 'control of conventionality';¹³ and b) the constitutional reform of 10 June 2011 on human rights and the understanding of Mexico's Supreme Court of Justice of all the implications of the country's incorporation into the Inter-American system on human rights. These developments have meant that all courts in the land, federal and from the States, have the power to 'disapply' statutes they deem contrary to human rights established in the Constitution or in international treaties signed by Mexico. This is an important step away from Mexico's traditional 'centralised' system of judicial review (control of constitutionality), towards a 'diffuse' system of constitutional justice.



3. Decisions of the Federal Electoral Tribunal enforcing the standards established in the federal constitution on how electoral processes have to be organized at state level

A relevant element of the dynamic of Mexico's democratisation process is the increasing importance of courts in the resolution of electoral disputes. This evolution has taken place against a historical background that long resisted the intervention of courts in electoral matters.

The role of the Supreme Court of Justice (SCJ) and the Federal Electoral Tribunal (FET) in the performance of their new functions has not been without tensions (both between these courts and between them and other actors). The judicialisation of political-electoral confrontations has produced responses on behalf of different actors participating in the political process, who have tried to set up limits to the Tribunal's increased powers. In the present section we shall examine how this has taken place, focusing first on the way in which the Supreme Court has applied the standards established in the federal Constitution to the rules for organising elections at State level; secondly, we shall study how the FET has exercised its power to review, through the proceeding for Constitutional-Electoral Revision, the constitutionality of acts and decisions of State agencies that organise State elections; and thirdly, we shall analyse how the FET has defined the scope of political rights through the so-called proceeding for the Protection of Political-Electoral Rights of the Citizen.

3.1. Federal Constitutional Standards and State Rules for Organizing State Elections

Since the end of the 1980s the federal government has gradually recognised opposition victories in State and municipal elections as a way of deflecting dissent from the national arena (Selee and Peschard 2010: 12). The recognition was the consequence of political negotiation, bargaining and give-and-take, rather than of the plain acknowledgment of the results in fair and truly competitive elections. For this reason opposition parties pushed for finding a formula that allowed democratisation at the State and municipal levels.

In this way, in 1996, article 116.IV of the Mexican Constitution was amended in order to introduce a series of standards that State constitutions and electoral laws have to follow.



According to the long and detailed list of standards established in article 116.IV:

- the guiding principles in the organisation of State elections shall be ‘certainty, impartiality, independence, legality and objectivity’;
- the authorities that organise elections and those that resolve electoral disputes in the States shall be autonomous in their functioning and independent in their decisions;
- State law shall establish remedies and proceedings to challenge illegal electoral acts and resolutions;
- State law shall also establish mechanisms to guarantee equity in the access of political parties to mass media;
- State law shall establish criteria to define limits to expenditure by political parties in political campaigns; as well as limits on money contributions by supporters;
- State law shall define which acts constitute electoral crimes and the corresponding penalties.^v

Apart from these standards, the constitutional reform of 1996 also opened up the possibility of filing actions of unconstitutionality to challenge State constitutions and statutes that contradict those standards. The use that political parties have made of this mechanism for control of constitutionality of State constitutions and electoral laws, has served to shape the latter according to the standards established in the federal Constitution.

In this way, for instance, the Supreme Court has concluded that:

A. A reform of the Constitution of the State of Chiapas which sought to extend the term of the incumbent State legislators and municipal authorities beyond their regular term in order to homologate State and federal elections was unconstitutional. The reason was that this decision violated the principle of no-re-election, the right to universal, free, secret and direct suffrage to elect authorities, and the right to political participation of citizens, all of which are granted by the federal Constitution.^{vi}

B. The reform of the Constitution of the State of Jalisco that sought to remove the members of that State’s Electoral Council was contrary to the federal Constitution, whose article 116 states that the members of those State authorities shall enjoy autonomy and independence.^{vii}

C. A constitutional reform in the State of Sonora related to re-districting for the purposes of State elections was unconstitutional. The reason was that the criteria used for re-designing electoral districts was a geographic one, rather than one that takes into



account the proportion of the State population in each district, as ordered by article 116.II of the federal Constitution.^{VIII}

In sum, since 1996, standards of the federal Constitution and the action of unconstitutionality have teamed (so to speak) in order to foster democratisation at State level. Yet, after 16 years of this reform, it is possible to say that democratisation has occurred in an asymmetric manner. Some States have truly democratised, while in others powerful authoritarian interests have been able to block the emergence and consolidation of political pluralism and fair electoral competition. Equity in elections is a pending matter in many States.

3.2. The Proceeding for Constitutional-Electoral Revision

The reform of 1996 introduced into the Constitution the so-called *Juicio de Revisión Constitucional Electoral* (Proceeding for Constitutional-Electoral Revision), through which the FET can hear claims against final acts and resolutions of the competent electoral authorities of the States charged with organising and certifying elections; or to resolve disputes that arise from them, which may be relevant for the development of the respective electoral process or for the final result of the election. This proceeding originates in article 99 of the Constitution and is regulated in its details in the Law on Contesting Electoral Matters.^{IX} In essence, its goal is to challenge the unconstitutionality of acts and resolutions of electoral authorities of the States in the election of governors, State legislatures, and chief of government of the Federal District and members of the latter's legislative assembly, as well as elected members of municipalities and local authorities of the Federal District. In practical terms, through this proceeding, political parties have standing to seek revision (by the FET) of decisions of State electoral authorities potentially 'captured' by State Executives.

Specifically, this proceeding has been used to review decisions of State electoral courts rendered in connection with disputes arising out of State elections. Nevertheless, as pointed out by Berruecos, the increased power of the FET has created tensions associated with federal intervention in local conflicts, especially as the Tribunal has broad scope to interpret State legislation and to review its application by State electoral courts (Berruecos 2003: 802).



A manifestation of this tension can be seen in the debate concerning the so-called ‘abstract cause’ to nullify an election, which has been a creation of the FET case law, and has no base on an express text of the Constitution. Essentially, it means that the FET can nullify State elections when it has found that a constitutional principle concerning the organisation of elections has been violated in a widespread way, creating reasonable doubt over the legitimacy of the relevant electoral process, even if the State legislation does not expressly foresee the possibility of nullifying the relevant election. This concept emerged in the context of a challenge against the election of governor of the State of Tabasco, filed by the PRD in 2000. The result was that the decision of the Tabasco Electoral Tribunal was reversed and the election for governor in the State of Tabasco was declared void by the FET, which also ordered the Tabasco legislature to appoint an interim governor, who was in turn to call a new election within six months.^x

The creation and use of the ‘abstract cause’ to nullify State elections by the FET (as it happened in Tabasco, 2000, in Yucatán, 2001 and in Colima, 2003) fuelled an intense debate on the proper scope of the Tribunal’s powers to interpret and apply the constitutional principles contained in the Constitution relating to the organisation of elections at State level. In fact, this debate led to an amendment to article 99 of the Constitution (as a part of the reform package of 2007), which today explicitly states that: ‘The Superior and Regional Chambers of the [Electoral] Tribunal shall only declare the nullity of an election on the basis of the causes expressly established in the statute laws’.

Yet, this addition to the Constitution, which intended to limit the FET’s power to nullify elections, has not ended debate on this issue. On the one hand, in several cases,^{xi} the Superior Chamber of the FET determined that the reform of 2007 meant that no longer could it nullify a State election invoking the ‘abstract cause’. On the other hand, in 2007 the Superior Chamber of the FET confirmed the decision of the Electoral Tribunal of Michoacán which nullified the election in the municipality of Yurécuaro, State of Michoacán, on account of the use of religious symbols and elements during the campaign of the winning candidate, which violated State electoral legislation as well as both the federal and State constitutions.^{xii} In this case, the winning candidate of the PRI challenged the decision of the Tribunal of Michoacán, alleging that the nullification of the election had been based on the ‘abstract cause’, which since the 2007 constitutional reform could no longer be applied. In response, the FET concluded that Michoacán’s Electoral Tribunal



had not decided the case on the basis of the ‘abstract cause’, but had directly applied the principle of separation of state and Church of article 130 and article 35.XIX of the Electoral Code of Michoacán, which specifically prohibited the use of religious symbols and expressions in electoral propaganda.

The debate is far from settled and is a manifestation of a tension between the Electoral Tribunal’s own conception of its role and scope of its power of constitutional interpretation; and attempts by political actors to set up limits on the Tribunal through the political process.

4. Decisions of the Supreme Court enforcing the standards established in the federal constitution that seek to protect independence and autonomy of state judges

States and the Federal District have their own system of courts, which apply the statutes passed by their respective legislatures. In addition, State courts also hear commercial disputes applying commercial statutes, which are federal.^{XIII} There are different kinds of courts within those entities. Typically, there are small-claims courts at the municipal level (normally with civil and criminal cases in the hands of the same judge); there are also courts of first instance (with jurisdiction to hear State law criminal and civil cases); and there is a Superior Court of Justice, which is the appellate level in the respective State (usually divided into several chambers, specialising in hearing on appeal criminal or civil cases, and in some jurisdictions family law cases). The *Tribunal Superior* of each State works *en banc* or in plenary sessions to resolve conflicts between its chambers.

As we can see, Mexico has a dual system of courts. Both systems are connected in the following way: the decisions of Superior Courts of the States and of the Federal District can be reviewed by federal courts (in general, by the so-called Collegiate Circuit Courts), through the writ known as *amparo casación*. This is one of the most important characteristics of Mexico’s courts system, which has had an impact on the definition of our judicial federalism (highly centralised) and on the constitutional evolution of the Supreme Court of Justice, as will be explained and discussed in section IV of this chapter.

It is relevant to mention that a constitutional reform of 1986 established standards for the organisation of State courts. Indeed, as a result of this reform, article 116.III of the



Constitution establishes a series of rules that seek to guarantee the independence and efficiency of State judicial powers. These rules refer to: job stability (State constitutions and laws have to establish the conditions for entry, training and tenure of the members of the Judiciary); the requisites to be appointed as State Magistrate (the same as those required to be a Justice of the Supreme Court, found in article 95 of the Constitution); life-tenure (Magistrates can only be removed for the causes and through the procedures foreseen in State constitutions and State laws on responsibility of public servants); economic stability (State Magistrates and judges' salaries cannot be diminished during their time in office). In general terms, the goal of the 1986 constitutional reform was to foster judicial autonomy and efficiency in the States of the Republic.^{XIV}

The writ of *amparo* has had an interesting evolution in connection with the rules contained in article 116.III of the Constitution mentioned above, which can be summarised as follows: though the action of *amparo* in principle was intended to protect private individuals (or juristic persons) against unconstitutional governmental acts and resolutions, it has been used by judges who seek protection against State governors (and State legislatures) who have tried to remove them, in violation of article 116.III 'judicial guarantees'.

The first (and leading) case is the *amparo* in revision 2639/96, filed by Mr Fernando Arreola Vega. In 1986, Mr Arreola was appointed by the legislature of the State of Michoacán, upon the proposal of the governor, as Magistrate to the Superior Tribunal of that State, in principle, for a period of three years. At that time, article 72 of Michoacán's Constitution established that Magistrates could be re-appointed, in which case they would enjoy life tenure. In the case of Mr Arreola, he remained as Magistrate for 10 years, but he was never expressly re-appointed nor removed from that position by three consecutive State legislatures.

In 1996 a new governor sought to appoint 10 new Magistrates of Michoacán's Superior Tribunal, which implied the removal of the same number of Magistrates in office (including Mr Arreola). Yet, via a writ of *amparo*, Magistrate Arreola challenged his removal and the appointment of a new Magistrate in his place on two grounds:

a) The very fact that he had remained as Magistrate for 10 years (throughout the term of three consecutive State legislatures) could perfectly be understood as a tacit re-



appointment, which in the light of article 72 of Michoacán's Constitution granted life tenure (protected by article 116.III of the federal Constitution).

b) In 1996 the State legislature had approved the appointment of new Magistrates without any sort of notification to Mr Arreola, nor with any kind of explanation concerning the legal basis and the motives for the removal (against article 16 of the federal Constitution which says that all acts of authority must express their legal basis and their motives).

In its decision, the Supreme Court stated that the case should be decided by seeking to protect the value of judicial independence. In this way, the Court saw an irregular situation that had to be resolved in favour of Mr Arreola: first, if his original period as Magistrate had expired without the designation of a substitute, and if the time required by the State constitution for obtaining the right to life tenure had passed, then it had to be understood that he had been tacitly re-appointed, and that in this way he had acquired the privilege of life tenure. To understand this situation in a different way – the Supreme Court reasoned – would involve subjecting tenure to the discretion of the other powers of the State government, to the detriment of judicial independence, because through that mechanism the members of the Judiciary could permanently be maintained in a situation of uncertainty in connection with their job stability. Moreover, the Court said that the removal of the Magistrate did require an evaluation report explaining the legal basis and motives for not re-electing him.^{XV}

In other *amparo* cases whose facts were similar to the case of Mr Arreola, the Supreme Court has expanded and refined its doctrine on the judicial independence of State Magistrates. In this way, it has considered that Magistrates have the following constitutional rights:

- a) To stay in their position for the entire time allowed by the State constitution;
- b) To be re-appointed whenever they have shown through their performance in the relevant office that they do have the qualities that were recognised in them when they were originally appointed;
- c) To life tenure; that is, the right not to be removed save for the reasons and procedures established by the Constitution and the corresponding State law on responsibility of public servants;



d) To continue in their functions while the new Magistrates are designated, and until they formally take office.^{XVI}

5. Conclusions

There has been little theoretical reflection on state constitutionalism in Mexico. One reason has to do with the centralized character of Mexico's federal system and political process. Thus, constitutional scholars have tended to focus on the national constitution only.

One of the few authors that has referred to state constitutionalism, views state constitutions as “derived” from the general constitution; this “derived” normative order moves within the margins, that can be wider or narrower, allowed by the “originary” constitutionalism (Valadés 1987: 80-81). The coordinates of this margin are formed by the residual powers clause of article 124 of the federal constitution;^{XVII} the prohibitions to the states that the latter defines in its articles 117 and 118; and the rules and standards that states constitutions have to follow in the organization of state and municipal political and administrative structures (found in articles 116 and 115 of the federal constitution respectively).^{XVIII}

This means that in Mexico there is less “subnational constitutional space” than in other federal states. In other words, Mexico's national constitution is more “complete” than many other federal constitutions (Williams 2011: 1110). Indeed, Mexico's federal constitution mandates quite a lot provisions and matters be contained in the state constitutions.

One of the main arguments of this paper is that decisions of the Mexican Supreme Court and Federal Electoral Tribunal may be seen as protecting that state constitutional space, even if defined in the federal constitution, from intrusions of state governments (mostly, from state governors).

The state constitutional space as defined in the federal constitution, has not been respected in many occasions by state governments (many of which are still dominated by powerful governors, scarcely controlled by the checks-and-balances that formally exist in state constitutions). This is related to the different rhythm in which transition to democracy has occurred at the federal level and at state level. In states that have lagged behind in



terms of rule of law and democratization, local forces resort to the national political and judicial process to make state governments to respect the "subnational constitutional space".

In general terms, subnational constitutions are similar to each other. As I said before, under the hegemonic party system, state constitutionalism was subordinated to national constitutionalism, and constitutional change in the States occurred as a consequence, as a reflex reaction, to changes in the federal Constitution. In turn, this led to great uniformity of state constitutions. However, the new room for manoeuvre created with the emergence of a multi-party and competitive system, at least since the year 2000, has allowed State political actors to shape their State constitution in original and creative ways, leading to some degree of differentiation.

One example mentioned in this paper is the creation of several subnational systems for the protection of state constitutions. As we mentioned in the paper, many states have a subnational judiciary that interprets the subnational constitution;^{XIX} yet, such interpretation can be reviewed by the national judiciary, following the tradition of centralized judicial federalism that Mexico has had for many decades, through the so called writ of *amparo*. In turn, this has discouraged the development and strengthening of subnational systems of constitutional justice.

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^I By hegemonic party system I mean one in which in spite of the existence of several political parties, one of them is clearly predominant and political-electoral competition is unequal and unfair, which in turn prevents the possibility of rotation in government. Under this kind of party system rotation cannot happen. See (Sartori 1976).

^{II} SCJ, Constitutional controversy 16/2000, *Semanario Judicial de la Federación y su Gaceta*, Ninth Epoch, Plenary session, XVI, August 2002, p 903. Published in the Official Gazette of the Federation on 21 June 2000. Thesis: P.XXXIII/2002.

^{III} Minority vote of Justices Juan Díaz Romero, José Vicente Aguinaco Alemán, Humberto Román Palacios and Juan Silva Meza, published in the *Semanario Judicial de la Federación y su Gaceta*, Ninth Epoch, vol. XV, June 2002, p. 406.

^{IV} The judicial doctrine of 'control of conventionality' appeared for the first time in the Inter.-American Court on Human Rights' judgment in *Almonacid-Arellano v Chile*: '124. The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of 'conventionality control' between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.' (Inter.-American Court on Human Rights, *Almonacid Arellano et al. v. Chile*, Judgment of 26 September 2006). Later on, the



doctrine was reframed in other decisions such as Inter-American Court of Human Rights, *Radilla Pacheco v United Mexican States*, Judgment of 23 November 2009.

^v The constitutional reform of 2007 amplified this list of standards, which today is formed of 14 paragraphs.

^{vi} SCJ, Action of unconstitutionality 47/2006 (and related actions 49/2006, 50/2006 and 51/2006).

^{vii} SCJ, Action of unconstitutionality 88/2008 (and related actions 90/2008 and 91/2008).

^{viii} SCJ, Action of unconstitutionality 18/2005.

^{ix} Articles 86–93.

^x Superior Chamber of the Federal Electoral Tribunal (FET). Thesis S3ELJ 23/2004. *Compilación Oficial de Jurisprudencia y Tesis Relevantes 1997–2005*, pp 200–201. FET, SUP-JRC-487/2000.

^{xi} FET, SUP-JRC-497/2007, SUP-JRC-500/2007 and SUP-JRC-165/2008.

^{xii} FET, SUP-JRC-604/2007.

^{xiii} This happens thanks to a rule in Mexico's Constitution which allows what is known as 'concurrent jurisdiction': when only private interests are involved in a dispute that fall within the scope of federal law, plaintiffs can choose to bring their action before State courts (article 104.II of the Constitution).

^{xiv} The Second Transitory article of the Reform Decree, gave State legislatures one year to reform their constitutions and corresponding statute law, in order to adapt them to the new constitutional standards of article 116.III.

^{xv} SCJ, *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, Plenary session, VII, April 1998, p 121, Thesis: P. XXX/98.

^{xvi} Moreover, the Court has stated that these are not just constitutional rights of the Magistrates, but also constitute the guarantee for Mexico's society to have independent, professional and high-quality justice.

^{xvii} Partially inspired by the Tenth Amendment of the United States Constitution, article 124 states that "it shall be understood that the powers not expressly attributed by this Constitution to the federal authorities, are reserved to the states." Nevertheless, the number of powers that are expressly attributed by the national Constitution to the federal authorities is very large.

^{xviii} Articles 115 and 116 provide a set of matters and issues- a checklist- that should be dealt with in any subnational constitution.

^{xix} Up to 2011, 20 out of 31 states had introduced subnational systems of constitutional justice.

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