

## 1968: ONE YEAR IN THE LIFE OF THE MEXICAN FEDERAL JUDICIARY\*

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*ABSTRACT: 1968 is considered a mythical year in many parts of the world. In Mexico, it has acquired an almost sacred status. The student movement is commonly viewed as the beginning of the prolonged process of democratic transition that has unfolded in the last decades. Although there is very abundant literature about the events of that year, the role that the Mexican Federal Judiciary (MFJ) played in them has practically not been examined. The article analyzes the situation and performance of the Supreme Court of Justice and the MFJ during that single year. For this purpose, the essay examines the following aspects: the composition, organization and resources of the federal courts; judicial statistics; judicial precedents; judicial ideology and public perception on the justice system; and finally, the intervention of federal judges in the judicial proceedings instituted against the students and other leftist political dissidents. The article concludes that the MFJ was subject to many constraints and limitations that, for good measure, hampered its role in the defense of constitutional order. Twenty years later the reforms leading to the transformation of the Supreme Court of Justice into a constitutional court were started, favoring a more active intervention of judges and courts in the protection and defense of fundamental rights.*

*KEYWORDS: Mexican Federal Judiciary, student revolts, judicial backlog, judicial statistics, writ of amparo, democratic transition.*

*RESUMEN: 1968 es un año considerado mítico en varias partes del mundo. En México ha adquirido un estatus casi sagrado, pues se considera comúnmente al movimiento estudiantil de ese año como el inicio del prolongado proceso de transición democrática que se produjo en las últimas décadas. Aunque existe una bibliografía muy abundante sobre los eventos de ese año, prácticamente no ha sido examinado el papel del Poder Judicial de la Federación (PJF) en ellos.*

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*El artículo analiza la situación y el desempeño de la Suprema Corte de Justicia y del PjF en su conjunto durante ese solo año. Para tal fin se estudian aspectos como la composición, organización y recursos de los tribunales federales; las estadísticas judiciales; la jurisprudencia; la ideología judicial y la percepción pública del sistema de justicia; finalmente, la intervención de los jueces federales en los juicios iniciados contra los estudiantes y otros disidentes políticos de izquierda. El examen concluye que el PjF estaba sometido entonces a un buen número de limitaciones que impidieron, en parte, que pudiera desempeñar un papel más relevante en la defensa del orden constitucional. Veinte años después se iniciaron las reformas encaminadas a la transformación de la Suprema Corte de Justicia en un verdadero tribunal constitucional y que promovieron una participación más activa de jueces y tribunales en la protección y defensa de los derechos fundamentales.*

PALABRAS CLAVE: Poder Judicial de la Federación, movimientos estudiantiles, rezago judicial, estadísticas judiciales, juicio de amparo, transición democrática.

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## I. INTRODUCTION

1968 is considered a mythical year in many parts of the world. Students took to the streets in protest and revolt in numerous countries: France, Germany, Italy, and the United States, among many others. According to Terry H. Anderson, 1968 was one of the most significant years of the 20<sup>th</sup> century because in “many ways the year marked the end of the post-World War II period and the first phase of the 1960s, and the beginning of a new and very different era in the United States and Western Europe”.<sup>1</sup>

In Mexico, the student movement of '68 has acquired an almost sacred status, as it is commonly viewed as the beginning of a prolonged process of democratic transition, in good measure due to the traumatic events of Oc-

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<sup>1</sup> Terry H. Anderson, 1968: *The End and the Beginning in the United States and Western Europe*, 16-17 SOUTH CENTRAL REV. 1 (1999-2000). See also MICHAEL SEIDMAN, *THE IMAGINARY REVOLUTION. PARISIAN STUDENTS AND WORKERS IN 1968*, 1 ff. (Berghahn Books, 2004).

tober 2 in the Plaza of the Three Cultures in Tlatelolco, Mexico City: the killing and disappearance, at the hands of government security forces, of a yet unknown number of mostly young persons who had peacefully assembled for a political rally that afternoon.<sup>2</sup>

There is a burgeoning number of studies and testimonies on the '68 in Mexico,<sup>3</sup> but little attention, if any, has been paid to the role played by the Federal Judiciary (*Poder Judicial de la Federación*), apart from justified critical comments on the sentences imposed by federal judges on the students and political dissidents who were arrested and prosecuted in connection with the unrest and protests of that year. However, had the Federal Judiciary, and the Supreme Court of Justice in particular, displayed a stronger defense and protection of the constitutional order and fundamental rights of Mexican citizens, the story of the Mexican '68 and subsequent political developments might have taken a different course. Therefore, an examination of the situation and performance of the Mexican Federal Judiciary in 1968 seems well in order.

Generally speaking, the Federal Judiciary is still one of the lesser-known institutions in the political and constitutional landscape of Mexico. This is certainly due to the subordinate position that courts and judges used to have *vis-à-vis* the other branches of power, particularly in relation to the all-powerful Federal Executive. This precarious situation notwithstanding, it should be recognized that Mexican courts and judges—and the Federal Judiciary in particular—did perform an important role during the post-revolutionary period. Although their decisions were not as independent as might have been expected, and even if they did not achieve the level of significance and authority to be desired, it is beyond doubt that Mexican judges made an important contribution to the legitimacy and stability of public institutions. In his classic study on *Democracy in Mexico* (1965), Pablo González Casanova had the following to say in his analysis of the role played by the Supreme Court of Justice until the early 1960s.

In view of all these data, one reaches the conclusion that the Supreme Court of Justice operates with a certain degree of independence *vis-à-vis* the Executive Power, and sometimes acts as a check on the actions of the President of the Republic or his collaborators. Its function is to allow, in particular, that certain actions and measures of the Executive be subject to review. Its main political function is to give hope to those groups and persons who are capable of using this remedy, for salvaging in particular their interests and rights...

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<sup>2</sup> Soledad Loaeza, *México 1968: los orígenes de la transición*, 30 FORO INTERNACIONAL 66-92 (1989).

<sup>3</sup> See, for example, the classical account of ELENA PONIATOWSKA, *MASSACRE IN MEXICO* (Missouri University Press, 1991). See also ELAINE CAREY, *PLAZA OF SACRIFICES: GENDER, POWER, AND TERROR IN 1968* (University of New Mexico Press, 2005) and JAIME M. PENSADO, *REBEL MEXICO: STUDENT UNREST AND AUTHORITARIAN POLITICAL CULTURE DURING THE LONG SIXTIES* (Stanford University Press, 2013).

That the Supreme Court is a power —with the features just pointed out— seems not to be in doubt, which does not prevent it from following, in their broad outlines, the policies of the Executive, and in fact serves to give it more stability.<sup>4</sup>

This state of affairs has considerably changed in the past two decades, as a result of profound transformations in the Mexican political system, mainly for the purpose of curbing the overwhelming hegemony of the Presidency. One of those changes concerns the strengthening of the Federal Judiciary, and especially of the Supreme Court of Justice. Since the late 1980s, several constitutional amendments have given the Federal Judiciary a new organization and conferred it new powers. This, in turn, has led to a new bearing and a new visibility of courts and judges in Mexican society. Such transformations have coincided, on the whole, with an expansion of judicial power in other parts of the world.<sup>5</sup>

The new prominence of the judiciary in Mexico has awakened the interest in the study and explanation of this phenomenon, not only of legal scholars, but also of sociologists, economists, political scientists and other social scientists. As a result, there is an increasing array of studies that make ever more detailed and sophisticated contributions to the knowledge we have on the behavior and performance of judicial institutions in Mexico. But this is still not enough. On the one hand, there is a dearth of comprehensive historical and comparative studies aimed at explaining why and how the transition we have described originated and developed.<sup>6</sup> Despite their evident interest and value, many studies take, as a departing point, the “reinvention” of the Federal Judiciary in the 1990s, which can only lead to a partial understanding of the relevant changes.<sup>7</sup> On the other hand, in-depth case studies on particular aspects of the court system, such as the selection and appointment of judges,<sup>8</sup> are also still lacking.

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<sup>4</sup> PABLO GONZÁLEZ CASANOVA, *LA DEMOCRACIA EN MÉXICO* 36-37 (Era, 1997); English transl.: *DEMOCRACY IN MEXICO* (Oxford University Press, 1970). A similar view is held by Carl Schwarz, *Judges Under the Shadow: Judicial Independence in the United States and Mexico*, 3 CAL. W. INT'L L. J. 260 (1972-1973).

<sup>5</sup> See the essays collected in *THE GLOBAL EXPANSION OF JUDICIAL POWER* (C. Neal Tate and Torbjörn Vallinder, eds., 1995).

<sup>6</sup> But see Héctor Fix-Fierro, *El poder del Poder Judicial. El Poder Judicial de la Federación en el siglo XX*, in *EL PODER DEL PODER JUDICIAL Y LA MODERNIZACIÓN JURÍDICA EN EL MÉXICO CONTEMPORÁNEO* 233-316 (UNAM, 2020).

<sup>7</sup> See José Antonio Caballero Juárez, *De la marginalidad a los reflectores. El renacimiento de la administración de justicia en México*, in *UNA HISTORIA CONTEMPORÁNEA DE MÉXICO: LAS INSTITUCIONES* 163-193 (Ilán Bizberg and Lorenzo Meyer, eds., 2009).

<sup>8</sup> See two recent studies on this topic: Julio Ríos Figueroa, *El gobierno del Poder Judicial y la carrera judicial en México, 1917-2017*, in *CIEN ENSAYOS PARA EL CENTENARIO. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS: ESTUDIOS POLÍTICOS* (Gerardo Esquivel, Francisco Ibarra

This article has a modest purpose: to offer a “snapshot” of the Mexican Federal Judiciary in only one year, 1968. As argued above, the events of 1968 in Mexico have been the object of all manner of scrutiny, but no one has attempted to include the federal courts in the account. What was the position of the Federal Judiciary within the institutional landscape? What were the specific problems and challenges it was facing at the moment? How close or how detached from daily life were the cases then being resolved by the Federal Judiciary? What was the public perception on the justice system? What role did the federal courts play in relation to the tragic events of 1968? How effective was the protection they could accord to the fundamental rights of citizens?

This article aims to provide some elements for answering the preceding questions. To this effect, it will examine relevant information derived from several sources. The analysis has a self-imposed temporal limit, but occasional reference will be made to a slightly broader time frame. Thus, we will examine the composition, organization and resources available to the Federal Judiciary in 1968; the types and outcomes of the cases filed with the federal courts in the period of 1967-1969; the interpretations issued by the Supreme Court in 1968; the judicial philosophy of its members and their reactions to current events; the public perception on the honesty and effectiveness of the court system; and finally, the criminal proceedings instituted against the students and political dissidents arrested in connection with the events in Tlatelolco.

The above analysis will show that the Federal Judiciary operated in a social and temporal space that seemed to lie apart from the space occupied by the rest of the institutions. Whatever the judiciary does has a history, has antecedent causes and consequent effects, but it does so under such time conditions and such formal criteria that a relative uncoupling of adjudication in relation to current social or political events occurs. This is the result not only of the characteristics that define the judicial institution itself, but also of the strong endogamous organization of the judiciary in the civil-law tradition (“judicial career”). Another factor is the more or less conscious isolation cultivated by the judges themselves as an outflow of their view of judicial independence, as well as of the values pervading the legal order and the justice system, which were, and still are, conceived of as being above and beyond political and social struggles. Another particular cause contributed to the “splendid isolation” of the Federal Judiciary: its permanent, and largely unsuccessful, fight against rising workloads and backlog.

In view of the above, it is understandable to find only vague and indirect allusions to the movements and struggles of the day in judicial speeches and reports. More seriously, it is also evident that the Federal Judiciary was not in a position to adequately address the expectations and demands for justice that surfaced in Mexican society in 1968. They were very simple demands: freedom of (political) assembly and association, freedom of (political) speech,

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Palafox and Pedro Salazar Ugarte, eds., (2017) and Héctor Fix-Fierro, *La carrera judicial en el Poder Judicial de la Federación*, in *EL PODER DEL PODER JUDICIAL*, *supra* note 6, 415-457.

the right to personal liberty and integrity. All these rights and freedoms were already enshrined in the Mexican Constitution and the government made it a cause for national pride. However, the ideology of the Mexican Revolution paid no more than lip service to individual freedoms and rights because “social justice” was at the core of its political program. Thus, while the Mexican Constitution provided for a specific remedy against the violation of constitutional rights—the writ of “*amparo*”—, its effectiveness was clearly impaired not only by the constraints imposed on it by the legal order itself and by actual court operation, but also by the ideological and organizational environment of the existing political system.

Twenty years had to elapse before the regime could adopt a different approach to judicial reform, one that was not centered on the fight against backlog, but one that realized the need to enhance the organization and powers of the judiciary. On the basis of the judicial reform of 1987 and other subsequent reforms (1994, 1996, 1999, 2011), the Federal Judiciary and the Supreme Court began a slow and long-term process of the reinsertion of the judicial system into the social and professional environment, thus confirming again the idea that the connections between society and justice are complex and always subject to the influence of diverse social and political developments.

Perhaps the judicial reforms of the 1980s and 1990s are a late product of the dramatic events of 1968, or at least it makes good sense to see them under that light. Those reforms were not necessarily started with a democratic agenda in mind, but the reformers could easily foresee, and accept, that the transformations they proposed had democratic consequences in the long run. Thus, the (hi)story of the Mexican Federal Judiciary in 1968 is still relevant to the challenges and perspectives we confront in our own days.

## II. COMPOSITION, ORGANIZATION, AND RESOURCES OF THE FEDERAL JUDICIARY IN 1968

According to the annual report of activities submitted by the president of the Supreme Court to his fellow justices at the end of 1968, the Federal Judiciary comprised the following bodies:<sup>9</sup>

The Supreme Court of Justice was composed of 25 justices (*ministros*): 21 justices, who sat in the plenary session (*Pleno*) of the Court, and four specialized chambers (*salas*), with jurisdiction in criminal, administrative, civil and labor

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<sup>9</sup> There were in 1968 several administrative courts outside the formal organization of the Federal Judiciary: the Fiscal Court of the Federation (*Tribunal Fiscal de la Federación*), the Federal Board of Conciliation and Arbitration (*Junta Federal de Conciliación y Arbitraje*), the Federal Tribunal of Conciliation and Arbitration (*Tribunal Federal de Conciliación y Arbitraje*), and the military courts. These courts are similar to the Article I courts that may be established by the Congress in the United States. However, they are expressly provided for in the text of the Mexican Constitution and the Federal Judiciary may review their final decisions.

matters; 4 justices (so-called “supernumerary justices” or “*ministros supernumerarios*”) who were part of the “Auxiliary Chamber” (*Sala Auxiliar*) established by the judicial reform of 1967.<sup>10</sup>

In 1968, the President of the Republic, Gustavo Díaz Ordaz (1964-1970), appointed three justices with ratification by the Senate:<sup>11</sup> Ernesto Aguilar Álvarez, who at the moment was a supernumerary justice, was appointed as a titular justice,<sup>12</sup> to occupy a vacant seat in the First (Criminal) Chamber,<sup>13</sup> and two supernumerary justices, Salvador Mondragón Guerra, who could look back to a long judicial career (but only part of it spent in the Federal Judiciary), and Luis Felipe Canudas Orezza, with a professional background in the federal public administration, and particularly in federal and state justice systems.<sup>14</sup> On January 1<sup>st</sup> of that year, the voluntary retirement of Justice José Castro Estrada took effect, while the mandatory retirement<sup>15</sup> of Supernumerary Justice Alberto González Blanco, and the voluntary retirement of the president of the Court, Agapito Pozo, were both approved to take effect on December 31.<sup>16</sup>

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<sup>10</sup> There was, therefore, one vacant seat in the Auxiliary Chamber.

<sup>11</sup> See RODERIC AI CAMP, *MEXICAN POLITICAL BIOGRAPHIES, 1935-2009* (4<sup>th</sup> ed., University of Texas Press, 2011). Professor Héctor Fix-Zamudio recounts that President Díaz Ordaz had reached an informal agreement with the Supreme Court, according to which the Court could nominate someone to fill a vacant position, and the President would freely choose on the following occasion. See HÉCTOR FIX-ZAMUDIO, *UNIVERSITARIO DE VIDA COMPLETA. MEMORIAS ACADÉMICAS Y RECUERDOS PERSONALES* 160 (UNAM, 2016). Presumably, the Court would prefer candidates with a prior judicial career, while the President would make his selection among candidates with an administrative or political background.

<sup>12</sup> The supernumerary justices did not participate in plenary sessions of the Supreme Court, which was also the governing body of the Mexican Federal Judiciary. After 1968, the supernumerary justices formed an Auxiliary Chamber that decided the cases assigned to it by the Court. Frequently, as in the case of Justice Aguilar Álvarez, the President of the Republic would appoint a titular justice from among the supernumerary justices, thus making the latter position a kind of trial position before a promotion to a seat as a titular justice.

<sup>13</sup> Justice Aguilar Álvarez was received in a plenary session of the Court on January 30, 1968. He had not followed a judicial career within the Federal Judiciary but had been a judge at the High Court of the Federal District (*Tribunal Superior de Justicia del Distrito Federal*) before being appointed a circuit judge by the Supreme Court.

<sup>14</sup> Both justices took their oaths of office before the Senate on October 10, 1968, and were received in public session by the Court on October 15.

<sup>15</sup> According to a law passed by the Federal Congress in 1951, all the judges of the Federal Judiciary had to retire on their 70<sup>th</sup> birthday.

<sup>16</sup> On the first meeting of the year, the plenary session of the Supreme Court elected its president, who could be reelected indefinitely. Justice Pozo had been elected its president in January 1965, one month after President Díaz Ordaz had taken office, and was reelected successively each year until his retirement at the end of 1968 (he had also been president for one year in 1958). He was succeeded by Justice Alfonso Guzmán Neyra, who had already been president between 1959 and 1964, i.e., during the entire term of President Adolfo López Mateos (1958-1964). He retired as president and justice at the end of 1973. Camp, *supra* note 11.

According to the biographies of the sitting justices, they came from varied professional backgrounds; none had followed a full career at the Federal Judiciary, but 5 of them (22 percent) had held one or more lower judicial posts or had been District or Circuit judges before their appointment.<sup>17</sup> Many had prior experience in state judiciaries (43 percent) and prosecutor's offices. This stands in contrast with the Supreme Court in the 1980s and 1990s, when more than half the justices had occupied most of the internal positions of the Federal Judiciary.<sup>18</sup>

At the close of 1968, there were 13 Circuit Collegiate Courts (CCCs or *Tribunales Colegiados de Circuito*), composed of three judges, with jurisdiction in "amparo" matters,<sup>19</sup> and 9 Unitary Circuit Courts (UCCs or *Tribunales Unitarios de Circuito*), with only one judge hearing ordinary federal appeals (mostly in criminal cases). Thus, there were only a total of 48 circuit judges. Six of the existing CCCs and four of the UCCs had been established by the judicial reform of 1967 and had begun operating in October 1968. The number of District Courts (DCs or *Juzgados de Distrito*) was also increased from 49 to 55, the first important growth in many years. (In 1930, there were a total of 46 DCs in a country with a total population of 16 million; in 1968, the size of the Federal Judiciary was slightly larger, while the population had almost tripled). Only 8 of the existing DCs had specialized jurisdiction and all of them had their seat in the Federal District. The rest of the DCs were distributed in 38 cities throughout the country, including 24 capital cities of the states.<sup>20</sup>

As can easily be seen, the total number of federal judges was quite small, i.e., 128 persons that could fit into a medium-sized conference room. There was only one woman among them, María Cristina Salmorán de Tamayo, who had been appointed justice to the Court in 1961 by President López Mateos while she was presiding the Federal Board of Conciliation and Arbitration (*Junta Federal de Conciliación y Arbitraje*, a federal labor court). In the Federal Congress there were already women members (in the Chamber of Deputies since the federal election of 1955, and in the Senate since 1964), while in the Executive branch no woman had yet been appointed to a cabinet-level position. No other woman would be appointed to the Supreme Court until 1976. The Court began to appoint women judges in the 1970s, first as Circuit judges and later as District judges.<sup>21</sup>

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<sup>17</sup> Camp, *supra* nota 10; SEMBLANZAS DE LOS MINISTROS DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (1917-2013) (SCJN, 2013).

<sup>18</sup> Fix-Fierro, *supra* note 8, 429-430.

<sup>19</sup> "Amparo" (or "writ of *amparo*") is a procedural instrument for the protection of the constitutional rights of citizens in Mexico. For a still useful introduction to the Mexican "amparo" in English, see Héctor Fix-Zamudio, *A Brief Introduction to the Mexican Writ of Amparo*, 9 CAL. W. INT'L L. J. 306 (1979).

<sup>20</sup> Since 1824, DCs in coastal states used to have their seat in the main port city and not the state capital. This is no longer so.

<sup>21</sup> In 1984 there were only six women serving as District judges (6.6 percent) and five as Circuit judges (5.7 percent). Fix-Fierro, *supra* note 8, 431-432.

The notable increase in the number of lower federal courts in 1968 required the appointment of a good number of Circuit and District judges. Their origins are interesting: a total of ten officials (clerks or *secretarios*) of the Court, 15 District judges and a judge of the High Court of the Federal District were promoted to the position of Circuit judge. The new District judges were selected among interim District judges (2 appointments), clerks to the District and Circuit Courts (17 appointments), federal public defenders (one appointment) and federal prosecutors (one appointment).<sup>22</sup>

With regard to these appointments, the president of the SCJ had the following to say:

It must be noted that in the appointment of these officials only the service record, honesty and competence of the favored persons were taken into account, and because the Supreme Court was absolutely independent in making its selection, it is solely accountable to public opinion for said appointments.<sup>23</sup>

And he went on:

...despite the lack of a specific law establishing a judicial career, the career ladder was practically used to reward the merits of the old servants of the Judiciary, thus expecting that their performance fully satisfies the imperatives sought after by the latest judicial reforms, whose transcendence and significance have been underlined on previous occasions.<sup>24</sup>

In fact, the internal hierarchy of the Federal Judiciary was not rigorously observed in the appointment process, i.e., that the Circuit judges had previously served as District judges, and that the District judges would be selected among the judicial clerks of the different court levels, as is the case nowadays. The Supreme Court of Justice had exerted considerable discretion in making its selections, taking mainly into account the record and performance of the candidates within the Judiciary, but without disregarding candidates from other areas of the justice system. In any case, the president's report underlines the independence and responsibility the Court assumed in its appointments policy, which were carried out well before the entry into force of the reforms, thus enabling the immediate installation and operation of the new courts.<sup>25</sup>

The appointment of judges was not the only personnel decision to be made by the Supreme Court,<sup>26</sup> since the Court had also to ratify the appointment of Circuit and District judges after a four-year trial period; to decide on the

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<sup>22</sup> INFORME RENDIDO A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR EL AÑO DE 1968, 24 (Antigua Imprenta de Murguía, 1968).

<sup>23</sup> INFORME, *supra* note 22, 24.

<sup>24</sup> *Ibid.*, 25.

<sup>25</sup> *Ibid.*, 23.

<sup>26</sup> *Ibid.*, 24.

promotion and assignment of judges and other Supreme Court officials, as well as to decide on leaves of absence, resignation and retirement. The following movements were observed in 1968: nine resignations (five for retirement pension, three for mandatory retirement and one resignation to an interim position), as well as 16 assignment changes of Circuit judges; one resignation, five ratifications, and 13 assignment changes of District judges.

In sum, the Federal Judiciary was barely larger than an extended family, and it is no accident indeed that it later came to be known as the “judicial family” (and not necessarily for the good reasons!), which meant that personnel policy and decisions were based on close personal relationships that allowed the appointing bodies and officials to evaluate the candidates in terms of their observed values, expectations, and commitment to the judicial institution.<sup>27</sup> The number of personnel decisions and movements to be made by the plenary session of the Supreme Court year after year was relatively small and, as mentioned, enabled the way for a full appreciation of the professional trajectory of the officials concerned. At the most, the reforms of 1967-1968 forced the Court to temporarily alter the unhurried pace of the appointment, assignment and retirement of judicial officials.

The growth in the number of federal courts was made possible by a considerable increase in the budget of the Federal Judiciary. According to the Court president’s report, a significant budget increase had been approved each consecutive year since President Díaz Ordaz had taken office in December 1964. The budgetary increase stood at 51 percent in nominal terms between 1965 (67 million old pesos) and 1968 (more than 97 million pesos),<sup>28</sup> in a context of very low inflation. Thus, the Federal Judiciary was able not only to establish new courts, but also to solve other material and personnel needs. In 1968, the salaries of all the judicial personnel were increased, including those of Circuit and District judges, but excluding the salary of the justices.<sup>29</sup>

The increases had partly come about by way of budgetary extensions granted each year by the Secretary of Finances (*Secretaría de Hacienda y Crédito Público*, SHCP), reaching the sum of 4.3 million Mexican pesos in 1968. For 1969, the SHCP had fixed a budgetary ceiling of 101.8 million Mexican pesos, but the Court had proposed a budget of 110.3 million Mexican pesos (almost nine million pesos more). The budget finally passed by the Chamber of Deputies was 107.1 million Mexican pesos, a number halfway between the

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<sup>27</sup> José Ramón Cossío refers to a “tutorial model” of the judicial career that was in operation until the early 1980s. Its main feature was close personal contact between the candidates to a judicial position and the justices who had the power to recommend and approve their appointments. JOSÉ RAMÓN COSSÍO, *JURISDICCION FEDERAL Y CARRERA JUDICIAL* (UNAM 1996).

<sup>28</sup> Between 1954 and 1976, the exchange rate was 12.50 Mexican pesos to one U.S. dollar.

<sup>29</sup> INFORME, *supra* note 22, 29 ff. According to the testimony of Héctor Fix-Zamudio, in the late 1950s and early 1960s, the clerks at the Court (*Secretarios de Estudio y Cuenta*) supplemented their meager salary with other professional activities. The justices accepted such activities as long as they did not involve litigation and did not compromise the objectivity required of their judicial responsibilities. Fix-Zamudio, *supra* note 11, 80.

ceiling fixed by the SCHP and the amount sought by the Court, but representing no more than 0.16 percent of the entire Federal Budget for the fiscal year of 1969.<sup>30</sup>

Despite such increases, the president of the Supreme Court pointed out that, notwithstanding that the administration of justice still had to face serious deficiencies that required urgent attention, “the fact that with such rudimentary resources it has been possible to erect the monument of respect and hope with which the Mexican people rewards the Federal Judiciary [was well] worth praise, thus involving our responsibility...”<sup>31</sup>

### III. JUDICIAL STATISTICS

It is quite difficult to analyze judicial statistics belonging to just one year because without a data series comprising a reasonably long period, it is not possible to identify changes and trends. It is, however, a limitation that does not prevent us from making some noteworthy observations. To put the data of 1968 in a broader context, both the statistics corresponding to the years immediately before and after, i.e., 1967 and 1969, will also be analyzed.

The following table provides information on the docket of the Supreme Court during those three years:

TABLE 1. FILINGS AND RESOLUTIONS  
BEFORE THE SUPREME COURT (1967-1969)

<i>Year</i>	<i>Existing</i>	<i>Filings</i>	<i>Workload</i> <i>(existing + filings)</i>	<i>Resolutions</i>	<i>Pending</i>
1967	19,994	11,644	31,638	11,305	20,333
1968	20,333	11,521	31,854	24,644*	7,210
1969	7,210	10,396	17,606	9,863**	7,743

\* In 1968, the chambers and the plenary session of the Supreme Court decided only 10,404 cases (90 percent of those filed that year); according to the table, resolutions comprised 14,240 cases, which were transferred to CCCs (12,442) and the Auxiliary Chamber (1,798).

\*\* In 1967, the chambers and the plenary session of the SCJN decided 9,863 cases (95 percent of those admitted that year); according to the table, resolutions comprised 2,085 cases, which were transferred to the Auxiliary Chamber and CCCs.

SOURCE: INFORMES RENDIDOS A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR LOS AÑOS DE 1967, 1968, 1969 (SCJN, 1967, 1968 and 1969).

<sup>30</sup> *Presupuesto de Egresos de la Federación, que regirá durante el año de 1969*, in *Diario Oficial de la Federación (Official Gazette of the Federation)*, December 30, 1968. For purposes of comparison: the Presidency was assigned 34 million 034,000 pesos; the Congress, 83.8 million Mexican pesos; the Secretariat of National Defense, 1.67 billion Mexican pesos, and the Secretariat of Public Education, 7.3 billion Mexican pesos, from a total federal budget of 66.09 billion Mexican pesos.

<sup>31</sup> INFORME, *supra* note 22, 37-38.

As may be easily observed, between 1967 and 1969, the Supreme Court managed to settle almost all the cases admitted in those years (more than 90 percent). However, in 1967 it had already accumulated around 20,000 backlogged cases and it did not seem that such number could be reduced any time soon; on the contrary, the trend was headed towards still more growth.<sup>32</sup> The table also reveals the immediate effect of the judicial reform of 1967 that took effect in October 1968 and allowed the Court (both plenary session and chambers) to transfer almost half of its workload, although the respective cases would still await decision by other federal courts. The data for 1969 suggest that backlog would grow again in the following years—as it so happened—because the number of pending cases at the end of the year was slightly (7 percent) higher than the number of existing cases at the beginning of the same year. In other words, pending cases before the Supreme Court were redistributed within the Federal Judiciary, but no real and lasting solution was achieved (even to this day) to the cyclic challenge of delay and backlog in so-called “judicial *amparos*”; that is, the appeal of final decisions of all the judges and courts of the country when violations of ordinary laws are involved.

Let us now look at the performance of CCCs according to Table 2:

TABLE 2. FILINGS AND RESOLUTIONS BEFORE THE CCCs (1967-1969)

<i>Year</i>	<i>Number of CCCs</i>	<i>Existing</i>	<i>Filings</i>	<i>Workload</i>	<i>Average workload</i>	<i>Resolutions</i>	<i>Pending</i>
1967	7	2,061	8,714	10,775	1,539	8,907	1,868
1968*	7	1,865	8,328	10,193	1,456	7,957	2,236
1969	13	550	28,789	29,339	2,257	16,412	12,927

\* Although at the end of 1968 there were already 13 CCCs, we are only counting 7 because the data contained in the annual report only covers 10 months, until October.

SOURCE: INFORMES RENDIDOS A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR LOS AÑOS DE 1967, 1968, 1969 (SCJN, 1967, 1968 and 1969).

There are some minor inconsistencies in the data reported by the Court, but the table reveals that, up to 1968, filings before the CCCs totaled less than 10,000 cases a year, the largest part of which they managed to decide, amounting to an approximate average workload of 1,500 cases per court. The judicial reform of 1967-1968 transferred a large number of cases previously pertain-

<sup>32</sup> The chamber with the highest backlog was the Second (Administrative) Chamber, with 7,598 “*amparos*” on appeal at the beginning of 1967. Fix-Zamudio, *supra* note 11, 73-74, refers to the crushing workloads affecting the chambers of the Court in the early 1960s. He claims that the so-called “*Secretarios de Estudio y Cuenta*” (literally translated as “Clerks of Study and Account”) who prepared the draft resolutions for the Court were rather known as “*Secretarios de Mucha Cuenta y Muy Poco Estudio*” (“Clerks of Much Account and Very Little Study”) because of the pressure under which they were required to work.

ing to the Supreme Court’s jurisdiction to the courts. Despite the establishment of six new CCCs, the average workload climbed to close to 2,300 cases per court. This again lends support to the idea that the reform provided some relief to the Supreme Court, but the internal redistribution of cases within the Federal Judiciary did not solve any actual structural problem.

The following table reflects the cases filed and decided before the UCCs:

TABLE 3. CIVIL AND CRIMINAL CASES BEFORE THE UCCs (1967-1969)

<i>Year</i>	<i>Number of UCCs</i>	<i>Existing</i>	<i>Filings</i>	<i>Workload</i>	<i>Average workload</i>	<i>Resolutions</i>	<i>Pending</i>
1967	5	1,027	3,786	4,813	963	3,703	1,110
1968*	5	1,110	3,672	4,782	956	3,826	956
1969	9	1,022	4,248	5,259	584	3,950	1,309

\* Data cover only ten months, until October (the “judicial year” begins in the month of December of the previous calendar year).

SOURCE: INFORMES RENDIDOS A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR LOS AÑOS DE 1967, 1968, 1969 (SCJN, 1967, 1968 and 1969).

These data reveal that workloads and cases pending before the UCCs at the end of the judicial year were relatively stable, but showed a significant reduction of the average workload in 1969, as a consequence of the establishment of four new UCCs in October 1968.

Finally, the following table presents statistical data related to the “amparo” cases filed and decided before the DCs between 1967 and 1969:<sup>33</sup>

TABLE 4. “AMPARO” CASES BEFORE THE DCs (1967-1969)

<i>Year</i>	<i>Number of DCs</i>	<i>Existing</i>	<i>Filings</i>	<i>Workload</i>	<i>Average workload</i>	<i>Resolutions</i>	<i>Pending</i>
1967	49	10,318	50,449	60,767	1,240	50,888	9,879
1968	49	9,879	51,942	61,821	1,261	51,752	10,069
1969	55	8,907	58,615	67,522	1,227	58,254	9,268

SOURCE: INFORMES RENDIDOS A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR LOS AÑOS DE 1967, 1968, 1969 (SCJN, 1967, 1968 and 1969).

The preceding table is interesting because it seems to suggest that an increase in the “supply” of judicial services, by way of the establishment of

<sup>33</sup> DCs are courts of first instance for ordinary federal cases (mostly civil and criminal), but they represent a rather minor sector of their total workload, so they are not included in the data of Table 4.

new courts, almost immediately results in an increase in the “demand” of such service, so that any gain in processing capacity tends to decay quite quickly. Thus, we observe that between 1967 and 1969 filings grew by 16.2 percent and the total workload by 11.1 percent, but the resulting reduction in the average workload amounted to only 1 percent. Apparently, there was a large and still unmet demand for justice, as an outcome of an ever-more developed and dynamic society, but such demand had been stifled by the scant growth of the federal judicial apparatus in the previous decades.

The preceding data may be supplemented by information provided by the annual reports on outcome of the cases disposed of by the DCs, as presented in the following two tables:

TABLE 5. OUTCOMES OF CIVIL AND CRIMINAL  
 “AMPAROS” BEFORE DCs<sup>34</sup> (1967-1969)

<i>Year</i>	<i>Resolutions</i>	<i>Granted (%)</i>	<i>Denied (%)</i>	<i>Inadmissible (%)</i>	<i>Dismissed (%)</i>
1967	36,133	4,648 (12.9)	4,303 (11.9)	2,142 (5.9)	24,512 (67.8)
1968	37,329	4,700 (12.6)	4,284 (11.5)	2,360 (6.3)	25,474 (68.2)
1969	37,784	5,054 (13.4)	4,661 (12.3)	1,970 (5.2)	25,773 (68.2)

SOURCE: INFORMES RENDIDOS A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR LOS AÑOS DE 1967, 1968, 1969 (SCJN, 1967, 1968 and 1969).

TABLE 6. OUTCOMES OF ADMINISTRATIVE AND LABOR  
 “AMPAROS” BEFORE DCs (1967-1969)

<i>Year</i>	<i>Resolutions</i>	<i>Granted (%)</i>	<i>Denied (%)</i>	<i>Inadmissible (%)</i>	<i>Dismissed (%)</i>
1967	14,755	2,939 (19.9)	1,588 (10.8)	620 (4.2)	8,013 (54.3)
1968	14,423	2,604 (18.0)	1,617 (11.2)	486 (3.4)	7,889 (54.7)
1969	20,470	2,209 (10.8)	3,646 (17.8)	560 (2.7)	10,398 (50.8)

SOURCE: INFORMES RENDIDOS A LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN POR SU PRESIDENTE EL SEÑOR LIC. AGAPITO POZO AL TERMINAR LOS AÑOS DE 1967, 1968, 1969 (SCJN, 1967, 1968 and 1969).

<sup>34</sup> For unexplained reasons, in the annual reports of the Supreme Court (until 1994), the statistical tables accumulate the outcomes of civil and criminal “amparos”, as well as the outcomes of administrative and labor “amparos”. This is surprising and peculiar, to say the least.

The preceding tables show the probability of citizens being granted relief by the courts in “*amparo*” cases challenging the decisions of various public authorities. In civil and criminal matters, the percentage of “*amparos*” granted oscillates between 12 and 13 percent; the percentage of “*amparos*” denied is similar.<sup>35</sup> Inadmissible “*amparos*”, those that cannot proceed for lack of jurisdiction, are relatively few (between 5 and 6 percent). The highest percentage of decisions, however (about 70 percent, or more than two out of three), comprise dismissed cases, those in which the petition for relief was admissible, but in which the presence of a procedural obstacle prevented the judge from making a judgment on the merits (for example, the claimant could not produce evidence for the challenged decision). In administrative and labor “*amparos*” the situation is similar: the number of “*amparos*” granted did not exceed 20 percent, with a significant decrease in 1969 that went together with a notable growth of final decisions in administrative matters, from 12,584 in 1968 to 19,343 in 1969. The percentage of “*amparos*” denied oscillated between 10 and 11 percent, also with a significant increase in 1969; the percentage of inadmissible “*amparos*” remained low (2 to 4 percent), and cases were dismissed in a proportion reaching more than half of all decisions (between 50 and 55 percent).

How can we explain that the majority of resolutions by DCs involved dismissed cases? Several possible explanations have been advanced and probably all of them reflect some part of the truth:<sup>36</sup> the incompetence of lawyers representing the claimants; judges need to control backlog, dismissing as many cases as possible in a context of increasing caseloads and almost zero growth in the number of courts (at least until 1968); the application of formalistic precedents, as defined both in statutes and higher court decisions, which prevent the judges from rendering a materially just decision; the filing of cases intended only to obtain temporal relief (a so-called “*suspensión*”), as the case will be finally dismissed, etc.<sup>37</sup>

The predominance of dismissal decisions is somewhat puzzling if considered from the perspective of the “*amparo*” as a presumably simple and effective means of obtaining redress for the violation of the fundamental rights of citizens by all sorts of public authorities. The truth is that, beginning in the last

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<sup>35</sup> Regarding the outcomes in “*amparo*” filings, a decision may, at the same time, grant, deny and dismiss different claims within the same case. The data we are examining do not make this distinction, so we may surmise that they tend to reflect the main mode of resolution of a case.

<sup>36</sup> A LA PUERTA DE LA LEY, chap. 2 (Héctor Fix-Fierro, ed., 1994), Ana Laura Magaloni and Layda Negrete, *Desafueros del poder. La política de decidir sin resolver*, 2 TRAYECTORIAS. REVISTA DE CIENCIAS SOCIALES DE LA UNIVERSIDAD AUTÓNOMA DE NUEVO LEÓN (2000), HÉCTOR FIX-FIERRO, EL AMPARO ADMINISTRATIVO Y LA MEJORA REGULATORIA 62 ff. (UNAM, 2005).

<sup>37</sup> An example: a motor vehicle that has illegally entered the country. An “*amparo*” filed in this case has the sole purpose of temporarily suspending the possible confiscation of the vehicle by the transit authorities. Since the driver or owner of the vehicle will not be able to prove its legal stay in the country, the case will necessarily be dismissed. See Fix-Fierro, *supra* note 36.

decades of the 19<sup>th</sup> century, the “*amparo*” became an increasingly complex, technical, multifunctional and costly remedy of last resort for all types of violations of ordinary laws and not only of the Constitution. To these technical complexities one must add the existence of a legal environment shaped (and misshaped) by the crushing power of the Executive, so that citizens had to face even higher obstacles in their attempt to obtain a favorable decision against the frequent abuse of power. This is well reflected in the tables we have examined so far and this, in turn, may have contributed to making the mythical “*amparo*” somewhat less effective in relation to the dramatic political and social events of 1968, as we explain further on.

#### IV. JUDICIAL PRECEDENTS

Since the end of the 19<sup>th</sup> century, decisions by the Supreme Court (and much later, also those of CCCs) were declared obligatory under certain conditions. Such conditions depended on the reiteration of the precedent a certain number of times (five), thus making such a precedent obligatory for all the lower courts, including state courts, but not administrative authorities, still bound by the principle of legality. Thus, a declaration of unconstitutionality had only the effect of invalidating the single act or decision challenged, i.e., no general or *erga omnes* effects were produced, but the existence of obligatory precedents (“*jurisprudencia obligatoria*”, as opposed to “*tesis aisladas*”, or isolated interpretations) made the granting of relief automatic if the facts of a subsequent case were substantially the same.

The interpretations (“*tesis*”), both obligatory and isolated, contained in the judicial precedents, as well as the full-text of some of the decisions, were published in the *Semanario Judicial de la Federación* (Weekly Federal Court Report) according to selective and not-fully explicit rules. In January 1969, the *Semanario* started its 7<sup>th</sup> epoch (“*7a época*”) to reflect the changes introduced by the judicial reforms of 1967-1968. However, the *Semanario* was some years in arrear, thus preventing litigants and judges from learning of the most important and relevant interpretations in a timely fashion. For this reason, the annual report submitted by the president on the activities of the Federal Judiciary also compiled the most significant interpretations issued by both the plenary session and the chambers of the Court during the past year. In this section we present a brief quantitative and qualitative analysis of relevant interpretations corresponding to 1968.

During 1968, the plenary session of the Court issued a total of 41 interpretations (“*tesis*”) relating to the (un)constitutionality of laws in “*amparos*” on appeal (“*amparos en revisión*”). Only five of these interpretations (about 12 percent) declared a law unconstitutional; 19 (46.3 percent) declared the respective law to be constitutional, and 17 more (41.5 percent) reflected other outcomes.<sup>38</sup>

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<sup>38</sup> INFORME, *supra* note 22, 139 ff.

Among the issues addressed by the plenary session of the Supreme Court were fiscal topics (taxes, fees, budgetary laws), the problem of “frozen” leases,<sup>39</sup> the rights of government employees, expropriation, the so-called “Article 123 schools”,<sup>40</sup> the freedoms of trade, work and association, the requirement of due process, and the scope of administrative arrest.

As an example of some of the issues of constitutionality discussed by the plenary session of the Court, we may cite the following:

- The decrees establishing a body for water supply management in the state of Morelos are unconstitutional because the users were not represented therein.<sup>41</sup>
- Administrative arrest (“*arresto*”) imposed in a contempt-of-court ruling (“*medida de apremio*”) is not unconstitutional (Article 73, section IV, of the Code of Civil Procedure of the State of Sinaloa).<sup>42</sup>
- The right to free and lawful association is not infringed by the requirement of leaving a chamber of industry and commerce before establishing a new one.<sup>43</sup>
- A requirement of minimum distance between commercial establishments of the same type as prescribed by statute (milk shops in the municipality of Torreón, state of Coahuila) is in violation of Articles 4 and 28 of the Constitution (freedom of trade and economic competition).<sup>44</sup>
- Compensation for expropriation may be paid in installments if it is not possible to pay the full amount immediately and the public need to be satisfied is urgent and justifies the occupation of private property (State of Veracruz).<sup>45</sup>
- The laws of the State of Nuevo León that establish taxes on non-enclosed urban property are unconstitutional, for violating the principle of

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<sup>39</sup> In 1942, in connection with the wartime emergency measures adopted by the Mexican government, a decree was issued “freezing” the amount the owners of real estate for lease could charge their tenants. The decree was not abolished once the war was finished but was indefinitely extended. In Mexico City this regime lasted until 2001. See María José García Gómez, *El impacto de la Ley de Renta Congelada en la Ciudad de México (1942-2001)*, in *EL MUNDO DEL DERECHO II: INSTITUCIONES, JUSTICIA Y CULTURA JURÍDICA* 487-511 (Andrés Lira and Elisa Speckman Guerra, eds., 2017).

<sup>40</sup> The name refers to Article 123 of the Mexican Constitution. According to the original section XII of this Article, the owners of agricultural and industrial enterprises had the obligation to provide elementary education to the children of their workers. See Engracia Loyo, *Escuelas rurales “Artículo 123”*, 40 *HISTORIA MEXICANA* 299-226 (1990).

<sup>41</sup> Amparo en Revisión (AR) 4390/57, decided on June 4, 1968; with a majority of 14 votes.

<sup>42</sup> AR 7984/57, decided on March 19, 1968.

<sup>43</sup> AR 74/61, decided on February 13, 1968; unanimity of 19 votes.

<sup>44</sup> AR 4080/63, decided on September 24, 1968; unanimity of 17 votes.

<sup>45</sup> AR 964/65, decided on October 1, 1968; unanimity of 16 votes.

tax legality and for imposing an exorbitant and ruinous tax rate infringing upon the principles of tax proportionality and equity.<sup>46</sup>

Considering the nature of the “*amparo*” and the traditional modes of operation in the courts, the preceding examples show that it was the business of the Supreme Court to decide on *concrete* constitutional questions by making very specific rulings that, although binding for the lower courts in similar subsequent cases, had a limited scope insofar as they did not make broad statements regarding the interpretation of fundamental rights. Thus, such interpretations belong to a period of judicial doctrine characterized as “statist” and “minimalist”, i.e., by the display of an increasing degree of deference towards public authorities due to the deliberate reduction of the scope of interpretations on individual rights and the consequent enlargement of the possibility of declaring any action or decision of those authorities as constitutional.<sup>47</sup> Many of the decisions were unanimous (but with less than 21 votes), thus suggesting that the issues examined had not been particularly controversial (and perhaps regarded as not very important by the absentee justices).

Moreover, due to the natural delay of judicial proceedings, in 1968 the Supreme Court was deciding cases that had been filed in the lower courts in the late 1950s and early 1960s. In other words, the Court was not deciding the important issues of the day (or at least, of the previous year), but cases with individual relevance and perhaps lesser social significance. Such cases, nevertheless, required a final decision by the highest Court of the country. In addition to this, the amendment of 1958, which transferred the declaration of unconstitutionality of laws from the individual chambers to the plenary session of the Court, provoked a still slower pace in the operation of the latter: the plenary session met only once a week, not only to decide cases, but also to address other governance and administrative responsibilities on behalf of the whole Federal Judiciary.<sup>48</sup>

With respect to the chambers, once they lost the power to declare the unconstitutionality of laws, their activity concentrated still further on the interpretation and application of ordinary statutes, also in a concrete and casuistic fashion. From a present-day perspective, there are not many interpretations (“*tesis*”) issued in 1968 that would arouse any particular interest. The production data for the chambers in that year are as follows:

The First (Criminal) Chamber published a total of 60 “*tesis*”, almost all of them deriving from “*amparos*” against judicial decisions, and mostly related to

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<sup>46</sup> AR 3518/66, decided on July 30, 1968, unanimity of 16 votes.

<sup>47</sup> JOSÉ RAMÓN COSSÍO DÍAZ, *LA TEORÍA CONSTITUCIONAL DE LA SUPREMA CORTE DE JUSTICIA* 114 ff. (Fontamara, 2002).

<sup>48</sup> Fix-Zamudio, *supra* note 11, 81. Schwarz, *supra* note 4, cites a study by then-Justice Tena Ramírez, which examined the impact of the 1958 amendment on the increasing delay in the review of unconstitutional laws by the plenary session of the Court.

technical and specific aspects of the criminal legislation. None appears as an obligatory precedent.

The Second (Administrative) Chamber had a very large area of jurisdiction to cover. Besides interpretations in administrative matters *stricto sensu* (15 “*tesis*”), there are another 31 “*tesis*” in agrarian matters; 56, in tax matters; and 6, in social security matters. Another 61 interpretations were related to further administrative issues, yielding a total of 163 “*tesis*”.

The Third (Civil) Chamber issued a total of 37 interpretations in “*amparos*” against judicial decisions, also relating to technical and specific aspects of the civil and commercial legislation of the whole country. Most of them are isolated, non-obligatory “*tesis*”.

The Fourth (Labor) Chamber issued 12 obligatory “*tesis*” and 22 isolated interpretations, regarding both procedural and substantive aspects of labor and employment legislation, which has belonged to federal jurisdiction since 1931. These interpretations could have a fairly significant impact on the activities of both workers and employers, as they were to be applied by the labor justice bodies (Boards of Conciliation and Arbitration).

As can be easily observed from this overview, although the cases decided by the Supreme Court of Justice concerned the most diverse issues and matters, its activity was concentrated in the decision —mainly through the chambers, as the plenary session had a very low processing capacity— of a large number of “*amparos*” against judicial decisions; that is, it purported to put an end to the ordinary controversies between citizens and between citizens and public authorities. This was a further manifestation of the dominant centralism, which was of a legal as well as a political nature. In view of the prevailing lack of confidence in the state courts (which persists to this day), a large proportion of litigants sought and obtained an opportunity to be heard by federal courts and, especially, by the highest court in the land. As a consequence, the role of the SCJ as the supreme and final interpreter of the Constitution was obscured and almost buried under the avalanche of cases that concerned only the faithful interpretation and technical application of ordinary laws and codes. This state of affairs was to be deeply altered by the judicial reforms of 1987 and 1994, to which we will refer later.

## V. JUDICIAL IDEOLOGY AND SOCIAL PERCEPTIONS ON THE JUDICIARY

While in many common-law countries —like the United States— the personal and professional ideology of candidates to a judicial position is crucial for deciding on their selection and appointment, as it possibly anticipates the policies they may pursue, in civil-law countries like Mexico, the political and ideological profile of judges is much less significant (except perhaps for judges deciding on constitutional issues) as their role and function is traditionally viewed to consist in the “strict application of the laws”. Their personal and professional

preferences are concealed behind the law, as a sort of protective shield that legitimizes and justifies their decisions in impersonal terms. For this reason, it is difficult —to this day— to ascertain a definite ideological and political profile of Mexican judges, including their most conspicuous representatives: Supreme Court justices.

In view of the above, we can hardly doubt that, in 1968, members of the Mexican Federal Judiciary preferred to “speak through their decisions”, using formal and technical formulas that would preclude us from directly approaching their political, social and legal thought. However, they frequently pronounced speeches on formal occasions (on the appointment or retirement of a justice, the opening of new courts, etc.), thus providing us with an interesting source of knowledge and insight regarding their legal and political ideas. The president of the Court also took advantage at the submission of the annual report of the Court’s activities to give a message that might be significant beyond the walls of the High Court. In this section we briefly examine a few speeches of the justices during the year of 1968.

In his last annual report as president of the Court, Justice Agapito Pozo had the following to say.

...the fact that with such rudimentary resources it has been possible to erect the monument of respect and hope with which the Mexican people reward the Federal Judiciary is worthy of praise, thus involving our responsibility; because whatever the defects and deficiencies of regimes of legality may be, it will always be true that they surpass in benefits those that have intended to replace them, especially when innovators are characterized by their destructive aims of everything that civilization has accumulated in the course of centuries and, above all, by the annihilation of the human person in her liberty and the respect she deserves.

...

Each generation desires to preserve, without blemish, the banner under whose shadow it has fought its battles and struggled for the endurance of the principles inspiring its ideals. It befalls us to erect the banner of legality in the chaos of the violence that threatens us, and should anyone intend to tarnish it with arbitrary actions, may the daily proclamation we make still be heard within the horizons of the Fatherland: “The Justice of the Union protects and safeguards...”<sup>49</sup>

These paragraphs seem to allude to the revolutionary impulses that the Cuban Revolution had strongly reawakened in Latin America during the 1960s, and perhaps also —in a rather oblique way— to the student movements and social protests of that year in Mexico. The speech discredits such movements and protests to the extent that they are radical, violent and destructive of what “civilization has accumulated” until that moment. Nevertheless, it does not attempt to make a direct defense of the political regime existing in Mexico at the time, but of legality as a system that allows for ordered and gradual change,

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<sup>49</sup> INFORME, *supra* note 22, 37-38, 39.

and of its ultimate guardian, the Federal Judiciary, which has the power to “protect and safeguard” (“*amparar y proteger*”) citizens against any arbitrary action of public authorities. In this sense, it may not be argued that the speech reflects a merely conservative or reactionary position. It should be noted that the president of the Supreme Court did not go on to praise President Díaz Ordaz for “saving” the institutions and the political order of the Republic that year, as others had openly done,<sup>50</sup> but merely thanked him for the support that had made the judicial reform possible.

In other speeches given that same year we find more clues on the justices’ thoughts regarding the work that the Federal Judiciary carried out daily, as well as the qualities and abilities required by the task of adjudication. We start by citing, rather extensively, some relevant paragraphs from the speeches given by the three new justices appointed to the Court in 1968. On January 30, 1968, after the words of welcome pronounced by the president of the Court, Justice Ernesto Aguilar Álvarez pointed out the following:

I acknowledge that the appointment favoring me does not belong to me personally, but as a member of the Judiciary, because its motive is surely to encourage District and Circuit judges who have diligently devoted their efforts to the judicial service, and it represents an impulse made by the Executive with the intention to activate, no doubt, the judicial career as an adequate means to achieve, together with judicial stability, a justice [that is] ever more independent and effective...

I realize that from now on I assume, before you and the Republic, a commitment to fulfill the high obligation of sharing, in the plenary session, the responsibility of deciding on the lofty national problems affecting the country’s life and whose resonance reaches the entrails of the Fatherland, because interior peace, social balance, and public tranquility depend on the legal order that imposes itself precisely through the right decisions of this High Court...

I also know well that I should, at your side, look after the preservation of the Supreme Court’s sovereignty, as well as its power of constitutional review of legislation and actions by public authorities, and its role as the supreme interpreter of the Constitution, gathering experiences from reality so that justice becomes the contents and goal of the law. In order to accomplish this most elevated mission, it is necessary to have abnegation as sacrifice, self-denial as largesse of spirit, discipline at work as order and unity in dynamic action, and the spirit of collective honor that is the splendor of virtue at the service of the group, and those forces, which undoubtedly prevail in this House, that have

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<sup>50</sup> So, for example, in response to the State of the Union address of President Díaz Ordaz on September 1<sup>st</sup>, 1968, federal deputy José de las Fuentes Rodríguez closed his speech with the following words: “And therefore our people, Mr. President, close ranks around you; they ratify their faith in the statesman’s qualities that distinguish you and they reaffirm their passionate confidence, because they know that, under your leadership, they may safely march along the broad paths you have marked towards unblemished patriotism, dynamic peace, material progress, and moral improvement”. INFORMES PRESIDENCIALES – GUSTAVO DÍAZ ORDAZ 309 ff. (Cámara de Diputados, ed., 2006).

made it possible for the Federal Judiciary to guarantee the atmosphere of peace in liberty and the enjoyment of freedom in justice that nourish the principles of the common good of society, and which inspire our institutions and are desired by the civilized men of the world, today more than ever, where unrest, fear and anxiety are threatening and in which it is necessary to strengthen the courts as a permanent school of civic virtue, so that human coexistence becomes more fruitful, thanks to the victory of the Law over force...

The members of this Branch of Federal Power are the most responsible heirs of a tradition emanating from the incessant struggle that our people have fought to preserve its independence and liberty, predicated on democracy and social justice; public institutions have granted us the legal instruments necessary to preserve the harmony enjoyed by Mexicans, thanks to the rule of law that promotes public peace; we are obliged, then, to strengthen the inalterable value of the law and to transmit, enriched, the national ideals that guarantee to the new generations a better order, sealed with the enduring sign of justice. For my part, I declare with the full force of my deep conviction that I will not spare any effort or sacrifice to fulfill this non-transferable duty.<sup>51</sup>

On his reception as supernumerary justice of the Supreme Court (on October 15, 1968, just 13 days after the events of Tlatelolco!), former Circuit judge Salvador Mondragón Guerra spoke the following words:

I am aware that my full dedication to the administration of justice has been one of the most powerful motives that the Chief Executive has taken into account for deciding my appointment, thus confirming the purpose of stimulating the establishment of the judicial career, and it has also been the spirit prevailing in this Supreme Court...

Contact with justice reveals that in it the grounds of existence are found, although there are not a few who, because of their skepticism, have lost faith in it. Whoever makes the law prevail, as a way for the realization of what is just, have convinced themselves that the function of law tends to be something more than “dead letter”, transforming itself into an effective form of social life. When Mexicans, be they knowledgeable or not in the law, turn their eyes towards the Supreme Court, they see it cloaked in clarity, because justice and the law are here tied together for the sake of coexistence, bringing, as far as possible, the reality of justice achieved closer to the idea of justice aspired.

No one doubts that our era lives under the sign of restlessness and rejection; the law has not escaped incredulity, and justice is deemed fragile and insufficient; whoever proclaims the law as a safeguard of order and liberty, oppose those who naturally lead towards anarchy; but the law, taken as a whole, is no more than an abstract statement; the designation of that which men have no other choice but to do because of the sheer fact of living in society. Those who think that the judge, in applying the law, lives an anguishing and dramatic situation are right...

The lack of understanding and the bitterness that frequently overwhelm us are compensated, on the other hand, by the higher possibilities provided to the rule of law, as the best instrument for the common good...

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<sup>51</sup> INFORME, *supra* note 22, 90-92.

The Constitution is not a dry and formal legal body; it is not enough to state its texts, it is indispensable to incorporate them into daily life and to turn them into everyday reality. The Federal Judiciary is in charge of this great responsibility...<sup>52</sup>

In his speech of reception as an auxiliary justice of the Court, on the same session of October 15, 1968, Luis F. Canudas Orezza expressed the following ideas:

Let me first leave proof of my warm appreciation of *Licenciado don Gustavo Díaz Ordaz*, worthy President of Mexico, for the deference of which he has made me an object of, by conferring me this assignment. I shall never forget the words which my dear friend Luis Echeverría, Secretary of Interior, said to me last Wednesday morning: “The President has appointed you justice of the Supreme Court...”.

The reform, recently introduced into the Constitution, of the “*amparo*” and the organization of the Federal Judiciary, with the establishment of an Auxiliary Chamber of this High Court, modifies the powers of its supreme body. Let us hope, my fellow justices, and let us make of it a commitment of honor, that this is the last time the Supreme Court declines its jurisdiction in favor of lower federal courts.

From the entry into force of the Constitution of 1917 to this date, the attempted solution to the backlog has been the diminishment of our jurisdiction or the establishment of new courts, without considering that this results in its disintegration and in the extinction of its qualities as a branch of power.

...Do not let the Constitution fall into inertia, my fellow justices, because an inert Constitution may imperil the institutions, the limitations imposed by it on power and even the validity of the human rights of most notable ancestry.

Let us concentrate our efforts so that the evolution of Public Law in Mexico becomes the work of the Supreme Court of Justice. We should not allow that the only advancement of the principles informing the Constitution are due to reforms introduced and achieved by the other branches of power. Let us have faith, above anything else, that the constitutional dynamics are in the hands of the Federal Judiciary... A Constitution modified through judicial precedent is always the work of constitutional science and not of transitory circumstances...

Historically speaking, within the State only constitutional powers have been limited powers. Nevertheless, our efforts should be directed towards the constitutional control of those social powers that affect and destroy man’s freedom in the present hour...

The Constitution arose to crush the desire for domination that characterizes power, which continuously forgets that the violation of human rights is a menace to world peace...

It was not by whim or fancy that the Independence, the Reform and the Mexican Revolution of 1910 created and perfected even more the rule of law in Mexico. A permanent calling to the enjoyment of liberties is in the being of Mexicans; it is a mystical pact for the establishment of freedom of thought; it is

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<sup>52</sup> *Ibid.*, 114-116.

a supreme conviction for the enjoyment of the right to work, to a fair salary and to the equitable distribution of land.

A Mexican feels the perils of a world turned insane by power very closely, and therefore, he demands equal economic opportunity for him and his family, and to have participation in all the tasks entrusted to Government. We are extremely jealous of the values of the spirit, because we are persuaded that the true investment of capital in the modern State is not represented by machines but by schools, not by economic power but by the right to culture...

The problem of our time, which I know well cannot be alien to the reflections of this honorable Supreme Court of Justice of the Nation, concerns the relations between power and liberty...

Without safety there shall never be liberty; but lacking liberty there shall not be safety either...

Liberty is lived and is not perceived; but since liberty is lived within the State community, it is the obligation of any judicial body in the world to provide liberty with safety.

Societies ruled by money and by the exploitation of man by man have never taken care of the rule of liberty and justice...

Power exists to save the dignity of man through dignified means, even under the shadows of a world that does not desire to be deserving of it.

Liberty may be doubted; there may be blunders transitorily overshadowing it; but always, in the face of power as force, the idea and the spirit shall survive as its insurmountable essences, and Prometheus shall again find the sacred paths of liberty.<sup>53</sup>

From the paragraphs we have cited, a clear difference in both contents and style may be perceived between the speeches of the two justices with a judicial background (Aguilar Álvarez and Mondragón Guerra) and the justice coming from the public administration and in particular from the Attorney General's Office (Canudas Orezza). The former converged on many of the issues they examined. One of them is the judicial career and the impulse given to it by the Court itself and now also by the Executive, which is a reason for gratitude. In this sense, they underlined the conditions of self-sacrifice and abnegation under which adjudication is carried out: it is a silent and arduous task, subject to many personal and material restrictions, but which, nevertheless, turns out to be indispensable for the survival of the Republic. Therefore, in a second moment and using the rhetoric typical of the legal profession, they outlined a judicial philosophy in which the Federal Judiciary, and in particular the Supreme Court, had an elevated social role in the maintenance of social peace through the law and legality. These values were fleshed out in the Constitution, serving as a repository of national ideals whose defense and protection had been entrusted, precisely, to the Judiciary. In particular, they both emphasized that through the power of judicial review and the ultimate interpretation of the constitutional text, the Court could exert considerable

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<sup>53</sup> *Ibid.*, 103-110.

influence on the most sensitive issues of public life.<sup>54</sup> The fulfillment of this function —they went on— was grounded on the recognition and trust that the Mexican people had granted the judicial institution. Nevertheless, in their view, law, legality and justice, as well as the climate of peace and tranquility prevailing at the time, faced clear threats, going from the skeptical stance of some to various forms of protest, disorder and anarchy, which were, for this very reason, rejected. Therefore, they insisted again on the central role of judges in sustaining the rule of law.

We do not find in these speeches any direct or specific mention neither of actual events in the country that year, nor of the protest movements of past years (for example, the movement of medical interns in public hospitals in 1964-1965),<sup>55</sup> but it is unlikely that the justices would not have had them in mind as they drafted their speeches. What they had seen and witnessed in those years would have surely reinforced their conviction that the Constitution, legality and justice, as ultimately safeguarded by the Federal Judiciary, were the only path for fighting disorder and anarchy, as well as for mending the abuses of power.

Justice Canudas Oreza's speech reveals various levels of depth that merit specific comment. Firstly, it is clear that the justice had a very close relationship with the ruling group of that moment, as he (rightly) assumes that only the President is to be thanked for his appointment, because the Senate could not, and did not play, any significant role in his confirmation. In second place, and somewhat surprisingly, Justice Canudas Oreza is critical of the judicial reform recently passed at the initiative of the same President (but prepared by the Court itself), to the extent that it required a transfer of jurisdiction from the Court to other lower federal courts (CCCs). In his eyes, such a transfer implied a deterioration of the Court's authority that had to be prevented in the future because the Court had a central role to play in constitutional interpretation and in the development of public law. Once again, this critical stance turned out to be inconsistent with the reality of the Court at the moment because it was not only the political regime, nor the specific distribution of powers within the Court and the Judiciary itself, that hampered the Court's role as the ultimate interpreter of the Constitution, but a crushing workload made up of ordinary, non-constitutional cases.<sup>56</sup> In fact, subsequent reforms —especially in 1987 and 1994— went further in the direction opposite to the wishes of Justice

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<sup>54</sup> We have seen that in reality the Court was swamped by cases concerning mostly the correct application and interpretation of ordinary laws, i.e., due-process issues, so that this emphasis turns out to be rather hollow.

<sup>55</sup> See RICARDO POZAS HORCASTAS, *LA DEMOCRACIA EN BLANCO: EL MOVIMIENTO MEDICO EN MÉXICO, 1964-1965* (Siglo XXI-UNAM, 1993).

<sup>56</sup> In a speech delivered at the opening of a new CCC on October 28, 1968, Justice Martínez Ulloa expressed his belief that the reform had been well-thought out and represented the best of all possible solutions because it allowed for a reduction and transferal of the backlog and workload of the Court to Circuit Courts, which would have the final say in many cases, but in

Canudas Orezza, i.e., further reducing the Court's jurisdiction over ordinary cases and determining its specialization in constitutional cases.

For the rest, the justice's speech delves into elevated and abstract philosophical questions, concerning the relations between power, security, and liberty. Like his two colleagues on the bench, Justice Canudas Orezza acknowledges the central role of the Federal Judiciary in the resolution of the complex issues raised by those relations. However, when dealing with the threats deriving from the exercise of power, he appears to be thinking rather of the perils originating in strong economic interests and invasive social powers, not State power. Thus, he appears to espouse the official ideology of the Mexican Revolution as a movement whose purported aim was to advance the rights of the worker, the peasant and ordinary citizens, by checking and controlling the appetites of the economic elite. On the other hand, there is again no clear or direct mention of the events at Tlatelolco two weeks before. Although it is hardly conceivable that Justice Canudas Orezza (and his two fellow justices) were not aware of them, it is also as unlikely that—in the context of his reflections on power, justice, liberty and safety—he would dare to openly and frontally criticize government repression. Political prudence would certainly discourage him from doing so and—coming, as he did, from the highest echelons of the same government—Justice Canudas Orezza would surely not have viewed things from that perspective.

In sum, the speeches we have examined confirm the idea that the Mexican Federal Judiciary seemed to operate largely detached from the political and social events of the moment, even though their authors undoubtedly had knowledge of and their own opinions regarding these events. The formal atmosphere surrounding adjudication fosters an insistence, on the one hand, on the central and indispensable role of the judicial organization in the resolution of social conflict and, therefore, in the maintenance of social peace, and on the other, on the higher—or at least different—level at which the application of the Constitution and the laws worked *vis-à-vis* the political and social struggles of the day.

“Judicial ideology”, as attested by the speeches we have examined, stood, no doubt, in stark contrast to the perceptions of public opinion and Mexican society at large. There we would surely encounter a much lower degree of confidence in the justice system than the one boasted of by the members of the Supreme Court. However, the press notes published that year cannot provide us with an objective social perception of the courts. It is no secret that the majority of Mexican newspapers and magazines were politically biased and controlled. Hence, either the justice system would not appear as an object of scrutiny, or the image reflected there would not correspond to its effective social role.

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a decentralized setting in the states. This was advantageous because it favored access to justice. See INFORME, *supra* note 22, 127-132.

Nevertheless, we have access to two socio-legal studies that were carried out around 1968 and paint a picture of distrust and corruption in the justice system. The first one analyzed private-law conflicts in relation to the administration of justice.<sup>57</sup> Its author describes Mexican legal culture as marked by the circumvention of open conflict (especially in rural or semi-rural areas), by distrust in the context of “substantial” interpersonal relations, by a lack of knowledge and awareness of legal rules, by very limited access to the courts, and generally, by the limited importance of the legal system for the emergence and resolution of disputes.<sup>58</sup> As part of the investigation, a small survey carried out in Mexico City and the state of Nayarit asked respondents the following question: “Do you think that the courts treat all persons equally, or do you think that a case can be won only through money and connections?”. Only 15 percent of respondents thought that everyone received a fair treatment before the courts, whereas 78 percent were inclined to think that only money and connections guaranteed a fair judicial treatment. Understandably, the latter percentage rose to 88 percent among respondents of the lower classes and it reached a full 99 percent of respondents in rural settings. Such percentage was also higher among those respondents who had had a conflict (57.6 percent of the total sample), regardless of whether they had filed a complaint (89 percent) or not (85 percent).<sup>59</sup>

Certainly, these answers are of limited usefulness in evaluating the performance of courts and judges in Mexico in the late 1960s, mainly because they do not distinguish between federal and state justice, or between the different branches of jurisdiction (criminal, civil, labor, etc.). They also need to be complemented by a series of more specific questions. They clearly reveal, however, the distance and the distrust of citizens towards the justice system,<sup>60</sup> and it puts the optimistic and even pompous view prevalent among members of the judiciary into perspective.

The above results are further confirmed by another study, published in 1968, on the honesty (understood as a guarantee in enforcing the law and

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<sup>57</sup> VOKMAR GESSNER, *LOS CONFLICTOS SOCIALES Y LA ADMINISTRACIÓN DE JUSTICIA EN MÉXICO* (UNAM, 1984).

<sup>58</sup> According to Gessner’s estimates and even including judicial proceedings, about 80 percent of all private-law conflicts (civil, commercial, labor) between private parties would be terminated without implicit or explicit reference to the law and the legal order. Gessner, *supra* note 57.

<sup>59</sup> Gessner, *supra* note 57, 91-92. Among those who had had a conflict, only 18.4 percent had filed a complaint before a court.

<sup>60</sup> It is interesting to notice how little this perception seems to have changed in fifty years. The same question Gessner formulated was included in a national survey carried out in late 2014. 71.4 percent of respondents were inclined to answer that only “through money and connections can a case be won”, 15.9 percent thought that “all persons are treated equally before the courts”, 5.9 percent gave other answers, and 6.9 percent did not know or did not respond. See HÉCTOR FIX-FIERRO ET AL., *ENTRE UN BUEN ARREGLO Y UN MAL PLEITO. ENCUESTA NACIONAL DE JUSTICIA* (UNAM, 2015).

rejecting any political or economic influence in court decisions) in the administration of justice.<sup>61</sup> A total of 240 interviews from a sample of judges and court officials, as well as attorneys, reveal a varying level of honesty in the various branches of jurisdiction. Administrative courts seemed to be the least dishonest, followed, in order of rising dishonesty, by the civil, criminal and labor courts. Evidently, there was a correlation between the socio-economic status of litigants and the level of dishonesty of the courts. It is less than surprising, therefore, that the higher levels of dishonesty and corruption were to be found in the criminal and labor courts whose clients belong to the lower economic strata of Mexican society.<sup>62</sup>

## VI. THE TRIALS AND TRIBULATIONS OF 1968

The events of 1968 —and the repression used by the government in their wake— ultimately reached the Federal Judiciary, as judges had to decide on the criminal charges brought by federal prosecutors against the revolting students and other political dissidents. The “*amparo*” was frequently used to challenge the detention and the criminal proceedings resulting from the actions of the security forces. Professor Héctor Fix-Zamudio —a well-known expert in the field of the law of “*amparo*”— recalls that many law students would approach him and show him the “*amparo*” petitions they had filed with the federal District courts on behalf of their fellow students who had been arrested in the marches and protests. They complained that the judges would peremptorily dismiss them, implying that they were under political pressure to behave that way. Professor Fix-Zamudio would patiently explain to them that the dismissal had rather resulted from a flawed drafting of the complaint. He would also point out that freedom of assembly was granted in Article 9 of the Constitution of 1917 on the condition that no violent actions were committed.<sup>63</sup> Therefore, it was not enough to be legally right *vis-à-vis* public authorities, but to realize that, for good or for ill, constitutional protection was only available if some demanding legal requirements and formalities were previously fulfilled.

The events of October 2 in the Plaza of the Three Cultures in Tlatelolco had more serious judicial consequences because the detention of many people present at the meeting that afternoon resulted in various criminal charges brought against them both before the federal judges and the courts of the Federal District. Newspapers informed, for example, that a local judge had sent 99 detainees (97 men and 2 women) to pre-trial detention. They had been charged with numerous crimes, such as robbery, violent destruction of public-transportation vehicles, damage to alien property, physical injuries, homicide,

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<sup>61</sup> Jorge A. Bustamante, *La justicia como variable dependiente*, in TEMAS Y PROBLEMAS DE LA ADMINISTRACIÓN DE JUSTICIA 13-44 (José Ovalle Favela, ed., 1982).

<sup>62</sup> *Ibid.*, 41 ff.

<sup>63</sup> Fix-Zamudio, *supra* note 11, 193.

use and collection of fire weapons, resisting arrest, criminal conspiracy, and the like. None of the detainees made bail.<sup>64</sup>

A federal District judge in Mexico City also sent 15 persons to pre-trial detention, after the Office of the Attorney General of the Republic (*Procuraduría General de la República*) had charged them with at least ten different federal crimes: robbery, criminal conspiracy, homicide, physical injuries, use and collection of fire weapons, damage to alien property, resisting arrest, kidnapping and attacks on general means of communication (one detainee was also charged with forgery and use of forged documents). Among them were some of the more visible leaders of the student movement: Sócrates Amado Campos Lemus, Pablo Gómez Álvarez, José Luis González de Alba, and Gilberto Guevara Niebla.<sup>65</sup>

Newspapers also recorded that, a few days later (October 26, 1968), 63 detainees were released from detention because the charges against them had been dismissed (58 were being prosecuted before several courts of the Federal District and 5 more faced charges before a federal judge). Three detainees were released on bail but remained on trial for the crime of sedition.<sup>66</sup>

Among the persons prosecuted before the federal courts in connection with the events of 1968 were prominent activists and politicians from the left-wing. Thus, for example, a well-known writer, José Revueltas (1914-1976), was charged with incitement to rebellion, criminal conspiracy, sedition, damage to alien property, attacks on general means of communication, robbery, looting, collection of fire weapons, homicide, and physical injuries suffered by agents of authority. In his statement before the federal prosecutor he accepted to be one of the leaders and figures inspiring the student revolt, but also that his main aim was the creation of an opposition political party that could participate—with an electoral reform—in election campaigns. He rejected violence as a means of political struggle, but also held that, ultimately, armed struggle was to be resorted to.<sup>67</sup> Heberto Castillo (1928-1997), a respected engineer and entrepreneur, was also arrested and charged with the same crimes as Revueltas, presumably committed during his political activities since 1961 as a founder and member of the Movement for National Liberation (*Movimiento de Liberación Nacional*), which Castillo held to be fully authorized by the Constitution.<sup>68</sup>

In the end, several of the leaders of 1968 who had been convicted and sent to the infamous prison of Lecumberri were released at the beginning of the administration of President Luis Echeverría (1971), as a gesture of political

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<sup>64</sup> LUCIO CABRERA ACEVEDO, *LA SUPREMA CORTE DE JUSTICIA DURANTE EL GOBIERNO DEL PRESIDENTE GUSTAVO DÍAZ ORDAZ (1965-1970)* 325 (SCJN, 2004).

<sup>65</sup> *Ibid.*, 326.

<sup>66</sup> *Ibid.*, 329.

<sup>67</sup> *Ibid.*, 331 ff.

<sup>68</sup> *Ibid.*, 339-341.

reconciliation, but they had to shamefully accept both their unjust conviction and a voluntary exile for a few years.

Interestingly, the leaders of 1968 were *not* charged with the crime of “social dissolution”. This crime had been incorporated into the Federal Criminal Code at the start of World War II, for the purpose of fighting sabotage and espionage by foreign or enemy agents, but once the war was over, it remained in the Code. After an amendment in 1951, it was used for prosecuting political dissidents. So, for example, the leaders of the 1958-1959 movement of railroad workers filed “*amparos*” against their long prison sentences, arguing that such crime was unconstitutional. The plenary session of the Court avoided taking a stance on this issue and quietly sent the “*amparos*” to the First Chamber, which denied the protection sought. Since at least five cases were decided in the same direction, the precedent became obligatory, and the Federal Judiciary further denied all subsequent “*amparos*” on the same issue.<sup>69</sup>

In 1968 there was already a strong doctrinal and public opinion against the political use of the crime of social dissolution. In fact, the six-point petition list of the student movement demanded the abolition of this crime. This may explain why the government decided not to file such charges. President Díaz Ordaz himself reacted to this climate in public opinion. In his State-of-the-Union address of September 1, 1968 (a month before the events of Tlatelolco), he emphatically denied the existence of “political prisoners” in Mexico, arguing that nobody had been prosecuted and convicted merely for expressing their political ideas and not for committing other material crimes. Nevertheless, he supported the idea of having the Congress review the issue. Although he made it clear that he personally disagreed with the possible suppression of the crime, he promised to immediately publish any decree passed by Congress, should it decide to abolish it.<sup>70</sup> In July 1970, several deputies and senators introduced a bill in Congress for the abolition of the crime of social dissolution. A bicameral committee was formed for the purpose of carrying out public hearings on the issue. Finally, at the end of that year the bill was passed and President Díaz Ordaz signed it into law before leaving office.<sup>71</sup> The amendment had the immediate effect of releasing all prisoners who had been convicted for social dissolution in the previous decade.

## VII. CONCLUSION

How should we assess the behavior of the Mexican Federal Judiciary in connection with the political and social events of 1968? Certainly, we cannot assume that the Supreme Court and the Federal Judiciary had any possibility of making their decisions under conditions of full independence and autonomy

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<sup>69</sup> *Ibid.*, 17.

<sup>70</sup> INFORMES PRESIDENCIALES, *supra* note 50, 160-161.

<sup>71</sup> Cabrera Acevedo, *supra* note 64, 369 ff.

if we consider the wide range of political, legal, economic and organizational constraints affecting them. Therefore, a direct confrontation with presidential power was completely out of the question. On the other hand, we cannot believe that the Federal Judiciary merely behaved as a docile instrument in the hands of the Executive branch, subject to its direct command, though we may safely suppose that all manner of indirect pressure were made to bear on the federal judges, perhaps with the desired results.

The fact remains, however, that the sentences against the leaders of student and other political and social movements of the day can be severely criticized on the basis of standards that were already recognized and protected by the Constitution at the moment, as the leaders themselves made abundantly clear in their public statements. In order to understand how this came to be, we must realize that the situation and context of the Federal Judiciary was very complex. Its performance was contingent on multiple factors, such as the state of the legal order at the moment, the trajectory of judicial precedents and constitutional interpretations, the origins and profiles of federal judges, and particularly the reality of the criminal justice system, utterly dominated by the Executive, in such a way that the outcomes of criminal convictions in politically sensitive cases were something of a foregone conclusion.

Evidently, there was a need for strong courts committed to the effective protection of constitutional rights. For many of the reasons examined in this essay, the Federal Judiciary of 1968 was not able to fully provide that protection. Twenty years later, however, a new judicial reform started the process of transforming the Supreme Court into a court focused mainly on constitutional questions, and especially on the protection of fundamental rights. A few legal scholars had been promoting this transformation for many years, until President Miguel de la Madrid (1982-1988) found the idea appealing enough.<sup>72</sup> On his recommendation, the Supreme Court formed an internal committee to examine the issue. The President introduced a bill for constitutional amendment prepared on the basis of the proposals made by the Supreme Court, and the Congress of the Union and a majority of state congresses finally passed the reform in 1987.<sup>73</sup> Accordingly, the final decision of all “*amparos*” that involved only the correct interpretation of ordinary statutes was conferred to the CCCs, whereas only those cases in which constitutional questions were still left open could be further appealed sent to the Supreme Court.

Interestingly, and in a context of intense political, economic, social and legal changes, the President did not encounter strong political obstacles to this kind of judicial transformation, one that would clearly confer more power on the Supreme Court, something that past presidents had studiously avoided. According to President De la Madrid’s own words, the country already found itself in an era in which

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<sup>72</sup> Fix-Zamudio, *supra* note 11, 317-318.

<sup>73</sup> *Diario Oficial de la Federación*, August 10, 1987.

...a definitive step could be taken by limiting the jurisdiction of the Supreme Court of Justice to the interpretation of the Constitution, while the review of legality issues could remain in the hands of lower instances. Thus, it is possible to reduce backlog and obtain a more effective administration of justice.<sup>74</sup>

Further on, President De la Madrid emphatically argued that he had managed to restore the Supreme Court to its role as a constitutional court,<sup>75</sup> i.e., the reform did not attempt to innovate. One could easily say that the Constitution of 1857 had already envisaged such a role for the Court. However, the development of the “*amparo*” in the last decades of the 19<sup>th</sup> century had led to an attenuation of the constitutional role of the Supreme Court as a consequence of its increasing intervention in the review of ordinary judicial decisions. This development was far from dysfunctional for the authoritarian political regime that was built up from the 1930s onwards.

Although extremely important, the judicial reform of 1987 still did not manage to transform the Supreme Court into a genuine constitutional court. The judicial reform of December 1994 conferred the Court new powers of constitutional review, and at the same time altered and reduced its composition to resemble a constitutional court according to the European model.<sup>76</sup> The effects of this reform have taken many years to fully unfold. It was not until 2007 that it was possible to identify a clear turn of the Court towards a more active role in the protection of fundamental rights.<sup>77</sup>

Had the Supreme Court of Justice acted in 1968 like the Court we have nowadays, it would have probably played a different role in the defense of constitutional order and fundamental rights, but then again, 1968 would not have become the mythical ‘68 of glorious memory.

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<sup>74</sup> MIGUEL DE LA MADRID, *CAMBIO DE RUMBO. TESTIMONIO DE UNA PRESIDENCIA, 1982-1988*, 717 (FCE, 2004).

<sup>75</sup> *Ibid.*, 842.

<sup>76</sup> Héctor Fix-Fierro, *Judicial Reform in Mexico: What Next?* in BEYOND COMMON KNOWLEDGE. EMPIRICAL APPROACHES TO THE RULE OF LAW 240-289 (Erik G. Jensen y Thomas C. Heller, eds., 2003).

<sup>77</sup> See Alberto Abad Suárez Ávila, *The Mexican Supreme as a Protector of Human Rights*, 4 MEX. L. REV. 239-260 (2012).