The *amparo directo* in the 21st century. From subjective to objective means of constitutional control

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Abstract: This article examines the evolution of the *Amparo Directo* (AD) in Mexico during the 21st century (2001-2023). I hold that AD has faced not just one, but two problems in recent years: the *classic problem*, which refers to its widespread use as a means of control of legality and the *contemporary problem*, which refers to the shortcomings of the Collegiate Courts' objective role in terms of control of constitutionality and the production of binding precedents. My argument is developed at two levels: a) I analyze the institutional design through an analysis of the constitutional reform process, and b) I explore the performance of federal Collegiate Courts through a study of their work in line with their power to solve cases and establish judicial interpretive criteria.
Keywords: collegiate courts; judicial reform; amparo directo; judicial behavior.

Resumen: Este artículo observa el desarrollo del juicio de Amparo Directo [AD] en México durante el siglo XXI (2001-2023). Sostengo que el AD enfrenta actualmente no solo uno sino dos problemas. El *problema clásico*, que se refiere a su uso generalizado como medio de control de la legalidad y el problema contemporáneo, que se refiere al déficit en los medios de control de la constitucionalidad en su dimensión objetiva por parte de los Tribunales Colegiados (producción de precedentes vinculantes). Para ello, la metodología aborda dos niveles: a) el diseño institucional a través del análisis del proceso de reforma constitucional, y; b) la actuación de los Tribunales Colegiados federales, a través del estudio del trabajo realizado en la materia, de acuerdo con sus

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atribuciones para resolver casos y fijar criterios.
Palabras clave: amparo directo; tribunales colegiados de circuito; reforma judicial; comportamiento judicial.

Summary: I. *Introduction*. II. *Institutional design*. III. *Empirical analysis of the classic problem*. IV. *Empirical analysis of the contemporary problem*. V. *Conclusions*. VI. *References*.

I. Introduction

What are the contemporary uses of the *Amparo Directo* [AD] in Mexico? The objective of this article is to answer this question, bearing in mind the constitutional reforms of 1999, 2011 and 2021. People often comment on the problems with AD in Mexico, although it is likely that no other procedural figure in the Mexican judicial system has generated as much interest as this one. Over the last one hundred and fifty years, it has attracted the attention of renown Mexican legal scholars, who have generated authoritative analyses of the topic.[2]

Among the different processes included under the concept of *amparo*,[3] AD is the one that raises the most controversy and polarizes opinions in the legal sphere (judges, lawyers, and academics). Although it was originally meant to serve as an exceptional and extraordinary means of constitutional control of final judgments issued by the *Suprema Corte de Justicia de la Nación* (hereinafter *Supreme Court*), its main function has become a means to control legality in the Mexican judicial system, in a similar way to wheich cassation appeals operate in other jurisdictions around the world. To date, the *Tribunales Colegiados de Circuito* (hereinafter *Collegiate Courts*) decide around 180,000 ADs each year, deciding in favor of the claimant in about one third of them and hereby granting them federal protection. The Supreme Court, in turn, hears dozens of AD cases and passes judgment on hundreds of ADs "under review" [ADRs] every year.

For some authors, AD exists to guarantee effective judicial protection anywhere within the Mexican judicial system, which is commonly perceived as inefficient, partial, and corrupt.[4] For others, AD is an institution that does not allow local courts to grow to their full capacity as it leaves it to the Collegiate Courts the possibility to review the legality of any final decision issued by any

[2] Emilio Rabasa, "El artículo 14. Estudio constitucional", *El Progreso latino* (1906); Héctor Fix-Zamudio, Estudio de la defensa de la Constitución en el ordenamiento mexicano (Porrúa, 2d ed. 2011); José Barragán, Proceso de discusión de la Ley de Amparo de 1869 (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 1987); Julio Bustillos, El amparo directo en México. Evolución y realidad actual (Porrúa, 2008); Manuel González-Oropeza, Constitución y derechos humanos. Orígenes del control jurisdiccional (Porrúa, 2009); Arturo Zaldivar, Hacia una nueva ley de amparo (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2002).

[3] [Arts. 103 & 107, *Constitución Política de los Estados Unidos Mexicanos*].

[4] Héctor Fix-Fierro *et al.*, Encuesta Nacional de Justicia (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2015).

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jurisdictional authority, causing work overloads, as well as an excessive concentration of human and material resources in the federal judiciary.[5] Some also claim that AD promotes an elitist justice that is "neither prompt nor expeditious" and difficult to access for the majority of the population.[6]

Research done between 2001 and 2023 has brought this discussion into the 21st century, especially noting the changes and resistance arising from the constitutional reform processes of 1999,[7] 2011[8] and 2021.[9] Likewise, the behavior of the Collegiate Courts has been analyzed from the perspectives of court rulings and the creation of binding precedents during those years. I argue that AD currently faces two different problems. On the one hand, the "classic problem" refers to its widespread overuse as a means of control of legality with severe negative consequences on judicial federalism. On the other hand, the "contemporary problem" refers to the shortcomings of the Collegiate Courts' objective role in terms of control of constitutionality andthe production of binding precedents.

This research examines how AD has developed in Mexico during the 21st century (2001-2023), taking the classic problem and the contemporary problem as its main variables. To do so, the behavior of the Mexican federal judiciary towards AD is examined on two levels: a) institutional design by analyzing the constitutional reform process, and b) Collegiate Court performance by studying the AD-related work these courts carry out, based on their powers to solve cases and establish criteria.

This double dimension —normative and performative— is necessary so as not to address the problem solely from a legalistic perspective. Studying regulatory change and performance is a classic strategy used by institutionalist studies to break away from research that only observes norms, as well as from those that observe reality without any normative references.[10] In this research, both the normative and empirical aspects are rigorously dealt with.

The time and place of the study are well defined. The location is limited to where the federal judiciary has jurisdiction while the time period covers the 21st century, specifically regarding what happened between 2001 and 2023 as recorded in the annual reports presented by the President of the Supreme Court,

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[5] José Barragán, Proceso de discusión de la Ley de Amparo de 1869 (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 1987).

[6] Alberto Abad Suárez-Ávila, *El juicio de amparo y la reforma al sistema de justicia en México* (1987-2018), 43 Cuestiones Constitucionales, 433-461 (2020).

[7] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], June 11th, 1999 (Mex.).

[8] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], June 10th, 2011 (Mex.).

[9] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], March 11th, 2021 (Mex.).

[10] Howard Gillman & Cornell W. Clayton, The Supreme Court in American Politics: New Institutionalist Interpretations (Kansas University Press, 1999).

who is also the president of *Consejo de la Judicatura Federal.* This period is sometimes extended a few years earlier to include the reforms of 1987[11] and 1994.[12] In the analysis of Collegiate Court performance regarding ADs, three different periods of interpretation are contained in the *Semanario Judicial de la Federación*, the main source of data for this article: the last years of the *Novena Época* (2001-2011) that began in 1995; the entirety of the *Décima Época* (2011-2021) and the first three years of the *Undécima Época* (2021-2023).

With regard to normative analysis, the main hypothesis is that legislative powers have disregarded the need to advocate for a change in the *status quo*; that is, none of the reforms presented in the period have been aimed at modifying or specifically limiting the extensive use of AD as a means of legality control. Despite this, a sub-hypothesis enhances the above, suggesting that the constitutional changes in the ordinary procedural justice system, mainly in the accusatory and oral aspects of criminal proceedings, as well as the inclusion of *ex officio* constitutionality/conventionality control, have modified the institutional design of AD from the outside.

The main hypothesis of the performance analysis is that the judicial branch of the 21st century has continued to address the classic problem in the same way it has since 1951: by creating as many Collegiate Courts as needed to attend to the demand generated by AD. This hypothesis is complemented by another sub-hypothesis claiming that the changes in the procedural systems of ordinary justice indirectly define a more extensive or more restricted use of AD.

There are also hypotheses on the contemporary problem of using AD as a means of objective constitutionality control. At the level of institutional design, one hypothesis is that the judicial reform processes of the early 21st century sought to strengthen the role of the Supreme Court as a constitutional court that exercises objective constitutionality control through its highly qualified and discretionary powers, as well as through an integrated case law system, that includes the Collegiate Courts.

With regard to judicial performance, I hold that despite a structural design that creates incentives for the Supreme Court and Collegiate Courts to assume objective control of constitutionality, they have difficulties in doing so because they continue the historical trajectories of formal and informal institutions (institutional rigor and path dependence) that draw them towards subjective constitutional control. Among these trends, we find an attitude of restricting active interpretation, as well as the rules for establishing binding precedents through consistent and consecutive Collegiate Court rulings. Moreover, the traditional ways lawyers file for ADs prevent an extended use of objective control of constitutionality.

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[11] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], August 10th, 1987 (Mex.).

[12] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], December 31, 1994 (Mex.).

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II. Institutional design

At the birth of Mexico as an independent nation, both American constitutionalism and modern developments in the civil law tradition bore a strong influence on its constitutional design. The figure of the Mexican *amparo* emerges in the *Acta de Reformas* of 1847 as a symbiosis of both traditions. From North American constitutionalism, we take the idea that the courts are the highest guarantors protecting the rights of people as established in the Constitution. From the Roman-canonical tradition, we take the idea that the true interpreter of the Constitution is the will of the people represented by its political powers; hence the judicial scope must be checked. The intersection between both traditions gave way to a one-of-a-kind legal figure: the Mexican *amparo*, which was created to protect the plaintiff's human rights (or 'individual guarantees' as they were known at the time). Granted by the federal judiciary, it limited effects to a specific range of protection with *inter-partes* effects, without impinging on the powers of the legislature.[13]

The *Acta de Reformas* of 1847 was specific on the issue of preventing broad control of legislative and administrative work from being carried out through an *amparo*, and so restricted its protection to each specific case. In this sense, the *amparo* was limited and its effects do not extend to the entire legal system. At the same time, care is taken to avoid any general declaration of unconstitutionality of a given legal provision. The *amparo* was originally restricted to protecting a plaintiff's individual rights against violations that might come from a public entity. In this context, protection is centered on the plaintiff. It emerged as a type of subjective control to protect the person who files an *amparo* against legislatures and administrations that have violated the person's rights.[14]

The drafting of the *Constitution of 1857*, where the scope of the *amparo* was expanded to protect against any authority and not just legislative and administrative ones, sparked a lively discussion on the origin of the *amparo* against judicial activity. The main issues debated were whether judges can violate individual guarantees and whether the *amparo* is the appropriate means of defense in such cases. This is no trifling matter since jurisdictional control of constitutionality is built on the assumption of the reliability of judges as rational beings trained to defend the constitution and legal order. Meanwhile, legislators and judges themselves tend to be reluctant to extend the influence of the *amparo* to include the judicial sphere, unless the conditions of the system itself and relevant litigation make it impossible to refuse.[15]

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[13] Oscar Cruz-Barney, *Introducción histórica. Artículo 103*, in Derechos del Pueblo Mexicano; México a través de sus Constituciones (Suprema Corte de Justicia de la Nación & Porrúa, Vol. X Exégesis de los artículos 96° al 115°) (2016).

[14] Julio Bustillos, El amparo directo en México, Evolución y realidad actual (Porrúa, 2008).

[15] Manuel González-Oropeza, Constitución y derechos humanos. Orígenes del control jurisdiccional (Porrúa, 2009).

Throughout its history of being used as a procedural tool, the *amparo* shows two fundamental characteristics: its flexibility to adapt to conditions of litigation in the Mexican justice system and its use as a remedy for failings in the judicial system. Eventually, the *amparo* was implemented as a means of protection against human rights violations in ordinary justice. In due course, it even came to absorb the figure of cassation, thus becoming a critical instrument for controlling the legality of judicial activity in the country.[16]

The adaptability of the *amparo* as a tool for litigation set forth in the *Constitution of 1917* allows it not only to be taken up by the reform power, but to evolve into what is now known as *Amparo Directo [AD]* with procedural rules of its own. Prior to that, protection against final resolutions was processed just like any other violation: first bringing the case before a District Judge and then filing an appeal before the Supreme Court. The Constitution of 1917 and the implementing legislation of 1919 state that judicial protection can be processed in one of two ways: any violation committed in the ruling or during the process that has an impact on the final decision is addressed by filing an AD before the Supreme Court, while any other type of procedural violation is pursued according to the generic *amparo* procedure. AD as a procedural instrument for final judgments with rules of its own appears in the Constitution of 1917.

The main problem since its adoption is that AD has been excessively used as a means of legality control. While it was originally designed for constitutionality control, is it right for federal courts to use it for mere legality control? Mexican scholars agree that using it for the latter is inacceptable and have shown that this has generated significant distortion in the justice system, which has led to serious consequences for the development and autonomy of local courts.[17]

Although the line between the concepts of constitutionality and legality is blurred, in general terms we can find at least three criteria to draw a line between these concepts: a) the type of constitutional provision invoked: legality control reviews rulings in light of the right to due process as recognized in Articles 14 and 16 of the Constitution, while constitutionality control is employed for direct violations of the Constitution, b) the validity parameter used to review the ruling itself: if the parameter corresponds to a secondary law, it falls under legality, but if it directly corresponds to the Constitution, it is control of constitutionality, and; c) the type of violation in question: if it is a violation of procedural formalities or due to the inaccurate application of the law, it is legality control, but if it is a violation of other types of rights, it is about constitutionality, regardless of the source.[18]

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[16] Héctor Fix-Zamudio, *Presente y futuro de la casación civil a través del juicio de amparo mexicano, in* Memoria de El Colegio Nacional (El Colegio Nacional, 1979).

[17] Julio Bustillos, El amparo directo en México, Evolución y realidad actual (Porrúa, 2008).

[18] Roberto Niembro-Ortega, *El interés excepcional en materia constitucional o de derechos humanos para la procedencia del recurso de revisión en el amparo directo*, 1 Boletín Jurídico Práctico 107-130 (2023).

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In the civil law tradition, violations to the principle of due process are usually solved through an appeal to the same court where the case is processed. The Mexican system attempted to implement a justice system model with cassation proceedings in the late 19th century. However, the flexibility of using the *amparo* trial for broader protection led to its replacement. This consolidation of the *amparo* trial has caused problems on at least two levels: its interference with the principle of judicial federalism and the excessive workload in the Federal Judiciary. To a greater or lesser degree, these problems have affected the concept of AD since the late 19th century and been the greatest encumbrance for constitutional reform in the 20th century.

The problem AD poses to judicial federalism is seen as an infiltration of federal judicial powers into local courts. In the *Constitution of 1824*, concurrent jurisdiction was believed to address problems of justice based on each one's own sphere. Every level of government was independent of the other as the Constitution of 1824 established that any matter that began at the local level would end at that same level. After the centralist period, the *Acta de Reformas of 1847* and the *Constitution of 1857* touched once more upon the principle of concurrent jurisdiction, which would again be upheld in the *Constitution of 1917*. Meanwhile, the protection known as *amparo* would correspond to an extraordinary constitutional jurisdiction. Any participation in addressing problems arising from ordinary jurisdiction, regardless of it being federal or local, would be limited to human rights violations specified in the Constitution.

Federal judicial jurisdiction through the *amparo* should not be the norm, but rather an exception to the constitutional jurisdiction in place to guarantee the protection of human rights. The problem of intruding federal powers arises when this extraordinary instrument provides regular protection of legality, moving away from its original intention of being used as an exceptional constitutional control and becomes a means of ordinary legality control. The moment in which it moves into the sphere of the ordinary local jurisdiction is not when it serves as an extraordinary protector of constitutionality, with all the power to do so according to the constitution, but in its role as a regular protector of the legality.

In this sense, the federal judiciary is believed to insert itself into local jurisdiction, replacing it to control legality. The consequences it has on the justice system are very harmful, condemning local judicial powers to eternal adolescence by which they cannot rectify their own problems of legality, and much less establish their own theories and interpretations. The most harmful outcome of this situation is that the judicial powers have not reached their maturity as a third power in the states.

From another perspective, the cassation protection model through AD has overwhelmed the federal judiciary workload, thus limiting its work in controlling constitutionality. The job of controlling the legality of all the trials in the country has resulted in an overload of federal cases that has only been partially resolved over the years. The constitutional reforms to the federal judiciary in

1951,[19] 1967[20] and 1979[21] were aimed at mitigating the effects of this jurisdiction through the creation of the first Collegiate Courts in 1951 to assist the Supreme Court in its labors, and later to establish a regime of concurrent powers shared between the Supreme Court and the Collegiate Courts as set in the reforms of 1967 and 1979.

The surplus of cassation cases has an extremely harmful side effect on the work of federal courts: it distances itself from constitutionality control, which should be its priority. The AD backlog has limited the Federal Judiciary's institutional possibilities to assume constitutionality control. In 1951, a trend began to leave constitutional control under the exclusive jurisdiction of the Supreme Court by creating an AD review recourse [ADR], which would consolidate itself in 1987 when the Supreme Court withdrew from the original AD jurisdiction, retaining only its power to choose to take on cases of "attraction".[22]

In this situation, constitutional control was gradually concentrated in the Supreme Court while legality control was housed with Collegiate Courts. This division ended up distancing Collegiate Courts from constitutional control and, for a significant period, it actually meant separating AD as a means of protecting constitutionality. Since 1987, the guiding rationale of the constitutional reform has been to build a Supreme Court with the traits of a Constitutional Court that is consistent with the democratization and modernization processes of globalized societies in the late 20th century. The biggest problem for the Supreme Court today is not the saturation of issues regarding legality, which was dealt with in the past century by creating infrastructure in the form of Collegiate Courts, but the lack of consistent work in the control of constitutionality, mainly in terms of objectiveness.

In contemporary theory, constitutionality control is two-fold: it can be subjective or objective. Subjective constitutional control refers to deciding on constitutional issues on a case-by-case basis and primarily seeks the protection of the parties. Objective constitutional control has a more ambitious purpose since it goes beyond specific cases and aims to correct systematic violations in the legal system. For many reasons ranging from judicial backwardness to political context and legal culture in the country, the Supreme Court has fundamentally fulfilled the legality aspects of its work through AD over other jurisdictions. Despite having the authority to control constitutionality since its foundation, its internal dynamics have favored legality over constitutional issues. By the end of the 20th century, the reform process sought to address this issue by strengthen-

[19] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], February 19, 1951 (Mex.).

[20] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], October 25, 1967 (Mex.).

[21] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], August 7, 1979 (Mex.).

[22] Constitución Política de los Estados Unidos Mexicanos [Const.] as amended, Diario Oficial de la Federación [D.O.], August 10, 1987 (Mex.).

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ing the role of the Supreme Court as a constitutional court, but not without errors in its design that would negatively affect the protection system.

Delegating the load of AD protection to the Collegiate Courts was done through an unfortunate formula that assigned matters of legality to the Collegiate Courts while reserving constitutionality issues for the Supreme Court, granting it the authority to take on cases of "interest and significance" in the 1987 reform, as well as the above-mentioned ADR. Those drafting the reform considered that concentrating constitutional issues in the hands of the Supreme Court of Justice was the most appropriate formula to strengthen its role as a Constitutional Court, moving away from a semi-concentrated model to a concentrated model of human rights protection. Between 1951 and 1999, ADR followed a model of subjective constitutionality control by setting the requirement of having a constitutional issue in order for it to proceed.

Not only Mexican federal courts, but also courts around the world that use *amparo*, have generally tended to give greater weight to the objective function over the subjective one, which in turn, rests more strongly on ordinary jurisdiction. Thus, in Spain for example, a 2007 reform established a new criterion of admissibility for *amparo* proceedings so that the Spanish Constitutional Court could only center on dealing with cases of "transcendental interest".[23] In Germany, strict requirements were also established to make the *amparo* a truly exceptional form of constitutional control that brought it closer to the "objective" than the "subjective" function.[24]

In Mexico, the Supreme Court was given tools for objective constitutionality control with the "power of attraction" granted in 1987, and the criterion of origin of "importance and significance" as part of ADR, which was added in 1999. The SCJN tools gained through AD were limited by case law by reiteration, which requires that the Supreme Court uphold the same interpretation of a decision for five consecutive times without any ruling to the contrary. This rule hampered the possibility of agile and efficient use of interpretive tasks. In fact, the Supreme Court struggled to build up its objective constitutional control role. Given the absence of subjective constitutional control, rather than carrying out objective constitutional control, the Supreme Court used its position at the zenith of the Mexican legal system to carry out a limited "selective" control, underusing its "power of attraction" and modifying the essence of the recourse of review to ruling on cases pertaining to important actors over criteria of interest and significance.

It was not until the constitutional reform of 2011 that the Mexican justice system rectified this situation, granting all courts in the country the power to exercise subjective constitutional control to protect human rights. The absence of such protection at a judicial level before then undoubtedly contributed to

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[23] Pablo Pérez Tremps, El recurso de amparo (Tirant Lo Blanch, 2d ed. 2015).

[24] Gertrude Lübbe-Wolff, ¿Cómo funciona el Tribunal Constitucional Federal? (Palestra Editores, 2019).

deepening the human rights crisis the country has faced in recent decades. 1987 to 2011 was a critical period in human rights protection at both objective and subjective levels due to deficiencies in institutional design.

For many authors, the *amparo* reform was one of the great topics missing of the constitutional reform processes between 1987 and 2011.[25] Despite expectations for a substantial modification after a powerful call for a new *Amparo Act* by Genaro Góngora Pimentel in 1999[26] and the 2006 *Consulta Nacional* organized by the Supreme Court, the reform process did not move in that direction.[27] Legislators failed to promote significant changes in matters of protection, thus contributing to the human rights crisis that is still experienced today.

The long-awaited constitutional reform to the *amparo* did not take place until 2011, along with a reform regarding human rights. Some of the most important changes to AD were the introduction of new limits on the expiration of a term for criminal proceedings of up to eight years after the final decision. Adhesive litigation was created to prevent different trials from adhering to the same resolution by simply adding the alleged violations of the parties in the original trial to the final decision.[28] Despite the reform being well-received, it is practically an agreement among its drafters that although the reform has brought significant benefits to indirect *amparo* trials, it did not represent an important change to the AD process.[29] The most anticipated changes, such as the limit on the criteria of origin or the creation of a local means of cassation, did not materialize.

Despite this, it is only partially true that judicial reform has had little impact on AD in the 21st century. Although procedural changes were limited, AD significantly transformed the justice system stemming not only from changes in its own institutions, but also through the reforms of other procedural means in the ordinary justice system for human rights protection. In another article with an in-depth analysis of the AD reform in the broader process of judicial reform, I argue that:

> It is true that the *amparo* trial reform of 2011 came at least ten years too late after its bases had been well founded in academic and comparative discussion. That period was enough to make AD lose its dominant role in the institutional design of the justice system. This reform did not have the ex-

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[25] Ana Laura Magaloni, & Arturo Zaldívar, *El ciudadano olvidado*, 28 Nexos XXVIII, 342 (2006).

[26] Arturo Zaldivar, Hacia una nueva ley de amparo (Universidad Nacional Autónoma de México, 2002).

[27] Jose A. Caballero-Juarez et al, Libro Blanco de la reforma judicial en México (Suprema Corte de Justicia de la Nación, 2006).

[28] Eduardo Ferrer Mac-Gregor, & Ruben Sánchez-Gil, El nuevo juicio de amparo. Guía de la reforma constitucional y la nueva Ley de Amparo (Porrúa, 9d ed. 2016).

[29] Francisca Pou-Giménez, *El nuevo amparo mexicano y la protección de los derechos: ¿ni tan nuevo ni tan protector?*, Anuario de Derechos Humanos, 10 (2014).

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> pected importance for a long time. For example, the human rights reform adopted a few days later shook up the Mexican justice system with greater force. The most important reform that the *amparo* underwent is seen in the changes made to the Mexican justice system, rather than to the modification of its institutional design. The appropriate way to view judicial protection today is as a procedure whose main function is to organize the assorted procedural options available in the justice system from its special place as a means of formal constitutionality control. [30]

AD in the 21st century has undergone an important transformation in its function in the justice system, mainly due to the changes made to the justice system itself through ordinary procedural means. The intense process of judicial reform that the country has experienced in recent years has modified the way justice is understood in Mexico and, consequently, the importance of the AD. Without a far-reaching AD reform, changes in the justice system simply show variations in the historical use of this means of control.

Recent judicial reform in Mexico can be divided into two stages: the first one or the *reform to the justice system´s upper echelons*, which spanned from 1987 to 2000, was oriented at building up the institutional autonomy of the Judiciary to contribute to the country's democratic transition, as well as to provide a means of resolving conflicts for relevant political actors. The second stage, or the *reform to ordinary justice*, went from 2000 to 2018 and focused on providing procedural instruments for ordinary justice.

Among the most notable modifications in the first stage was to strengthen the role of the Supreme Court as a Constitutional Court as mentioned above, as well as to transform its structure, and its way of working. Of utmost relevance was the creation of the *Consejo de la Judicatura*, the establishment of a civil service career within the judiciary or "*Carrera judicial*" and the creation of the Electoral Tribunal or "*Tribunal Electoral*". The reform of Constitutional Article 105 stands out as it gave the Court the power to issue declarations of unconstitutionality through *acción de inconstitucionalidad* as a new means of constitutionality control and expanded active legitimation for municipalities in cases of constitutional controversies (Fix-Fierro, 2020: 233-316).

The second stage of the judicial reform, which I call a *reform to ordinary justice*, adds different constitutional amendments that contributed to modifying the scope of AD. Among the most important are the criminal procedure reform and alternative dispute resolution of 2008; the human rights reform of 2011; and the labor reform derived from *Diálogos de la Justicia Cotidiana* process in 2017.[31] It is important to include other legal reforms that did not reach a

[30] Alberto Abad Suarez A., *El amparo judicial y la reforma al sistema de justicia en México*, 43 Cuest. Const., jul./dic. (2020).

[31] Javier Martin Reyes, Reforma En Materia De Justicia Cotidiana (Fondo de Cultura Económica, 2018).

constitutional level but have also transformed the justice system, such as the reform regarding oral trails for trade issues, which started in 2011.

One of the most illustrative examples is found in the change to an oral accusatory criminal procedure system implemented between 2008 and 2016. Among other aspects, the figure of *juez de control* was introduced as the real judge of due process control in charge of guaranteeing the rights of the parties during the investigation and intermediate stages. The *juez de control* allows Collegiate Courts to declare that previous stages in AD have been exhausted. The *juez de control* has the advantage of being able to monitor due process immediately and in person much more efficiently than the Collegiate Court. Other aspects such as strengthening the figure of the public defender is also important to controlling the legality of the processes.

But perhaps the reform with the greatest impact on the role of AD in the justice system is found in the inclusion of *ex officio* diffuse conventionality control, the newest form of constitutionality control recognized by the Mexican system, which grants this power to all judges in the country. Before 2011, under the concentrated control model of *amparo* only the federal judiciary could perform constitutionality control, and in the most restrictive interpretations only the Supreme Court could do so. Since the constitutional reform of June 10, 2011, it is the obligation of all the country's authorities, notably judges, to carry out diffuse *ex officio* constitutionality control. The greatest advantage this innovation offers is to settle constitutional conflicts at the earliest possible procedural moment without the need of an *ad hoc* procedure.

In 2021, a new cycle of reforms emerged to once again review judicial structures in a way that has not been seen since the 1990s. The epistemology behind the process has yet to be studied, but its driving force has been the fight against corruption and nepotism and in favor of gender equality and the promotion of human rights.[32] This reform has focused on creating a new role for the *constitutional judge*, by including the auxiliary positions (clerks and officials) in the civil service and establishing a Federal Judiciary Education School (*Escuela Federal de Formación Judicial)* at a constitutional level. The reform also modifies the rules for creating judicial precedents on two levels. On the one hand, it establishes *Plenos Regionales* to replace the *Plenos de Circuito* of the 2011 reform while on the other hand establishes the new rules of case law by precedent in the Supreme Court.

The significance of the reform regarding case law based on precedents is enormous since the change grants the Supreme Court an institutional context of much greater operability to address constitutionality control in its objective dimension. Throughout history, the greatest operational limit was the rule of reiteration to develop its case law. The need for five consecutive cases ruled in

[32] Jose A. Caballero-Juárez, La reforma judicial de 2021. ¿Hacia dónde va la justicia? (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2021).

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the same direction with none against impeded the development of useful case law, preventing it from providing the justice system with relevant criteria.[33]

The new precedent model also allows the Supreme Court greater flexibility in selecting the cases to be handled. For a long time, it was a contradiction that attention in AD and ADR was limited to issues of "interest and significance," but the interpretation of these matters still depended on the reiteration of five consecutive rulings. This of course diminished the strength of the objective dimension of its control. Many relevant criteria remained at the level of isolated opinions because the rule of case law by reiteration forced the Supreme Court to "fish" for cases in Collegiates Courts or to wait for sufficient ADR to make the criterion mandatory.

With the new precedent model, the criterion of reiteration is no longer needed to establish mandatory precedents since a single decision is sufficient to generate a precedent. In addition to the change in the formal rule, precedents substantially modify the way case law is carried out. The need for formality of the precedent is maintained without the complete ruling being considered a precedent. ADR adds the prohibition of admitting any appeal against the order dismissing the review. This reform was important because since 2011 it has significantly increased the number of ADR filed before the Supreme Court, as well as the number of appeals its rejection causes, taking time and relevant resources away from the Supreme Court.

III. Empirical Analysis of the Classic Problem

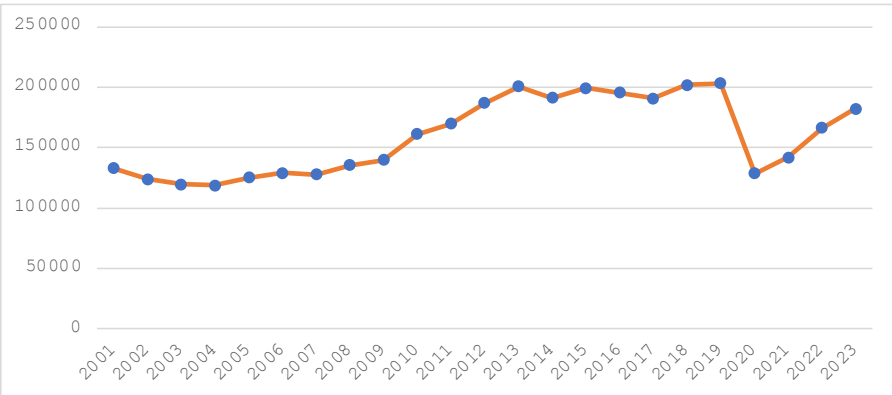
This section addresses the subjective control carried out by the Collegiate Courts through AD from 2001 to 2023. I do not differentiate between control of constitutionality, conventionality or legality because this would imply carrying out a qualitative analysis of the cases which would go beyond the scope of this article. Despite this, we can conclude that the vast majority of AD refer to issues of mere legality, based on interviews carried out with federal judges. We will focus on the trends of permanence-change in the federal judiciary regarding AD resolutions. The database has been built from the annual reports presented by the corresponding Supreme Court presidents of the timeframe in question.

Figure 1 tracks the number of AD cases the Collegiate Courts dealt with between 2001 and 2023. A steady trend can be seen between 2001 (132,923) and 2007 (127,922) in the number of completed cases, which then increases rapidly between 2008 (135,565) and 2013 (200,998). By 2013, there is already a difference of 51% up from 2001. From 2013, when the new *Amparo Act* came into

[33] Michelle Negrete-Cárdenas, El precedente judicial en la jurisprudencia de la Suprema Corte de Justicia de la Nación. Un estudio crítico con motivo de la reforma judicial 2021(Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2022).

force, to 2019 (203,307), the number of cases stabilized at around 200,000 per year. In 2020 (128,880) there was a significant drop due to the COVID-19 pandemic, with a reduction of 36.64% compared to the previous year. An upward trend begins again in 2021 (141,937), which by 2023 (182,596) has not returned to pre-pandemic levels.

Figure 1.
AD cases resolved annually by Collegiate Circuit Courts (2001-2003)



Source: Created by the author based on the annual reports issued by the Presidency of *Consejo de la Judicatura Federal* 2001-2023.

The numbers show that the age-old problem of judicial backlog is starting to be dealt with. The burden of AD (182,596 cases in 2023) has been managed by an extensive network of Collegiate Courts throughout the country (258 Collegiate Courts at the end of 2023). In 2001, there were 154 Collegiate Courts, but by 2022, this number reached its peak with 253 Collegiate Courts and 19 Auxiliary Courts. In 2023, there are 258 active Collegiate Courts and no Auxiliary Courts. Between 2001 and 2023, 104 new Collegiate Courts were created, which represents a growth of 67.5%. These numbers confirm the tendency of setting up new Collegiate Courts to meet the demand for AD cases in the country, as early as 1951 and this has intensified since 1987.

Research has found data regarding the behavior of the completed cases of AD and its relationship with the creation of new Collegiate Courts. By 2013, the number of AD had stopped growing. In fact, in 2020 with the measures adopted by the federal judiciary during the COVID-19 pandemic, the number of cases dropped significantly (36.64%) compared to the previous year. Although cases have increased between 2021 and 2023, they have not reached pre-pandemic case levels.

The *Consejo de la Judicatura* continues to create Collegiate Courts. It is true that AD is not their only workload, as they also attend very similar numbers of *amparo en revisión*. However, it is still striking how federal jurisdictional bodies

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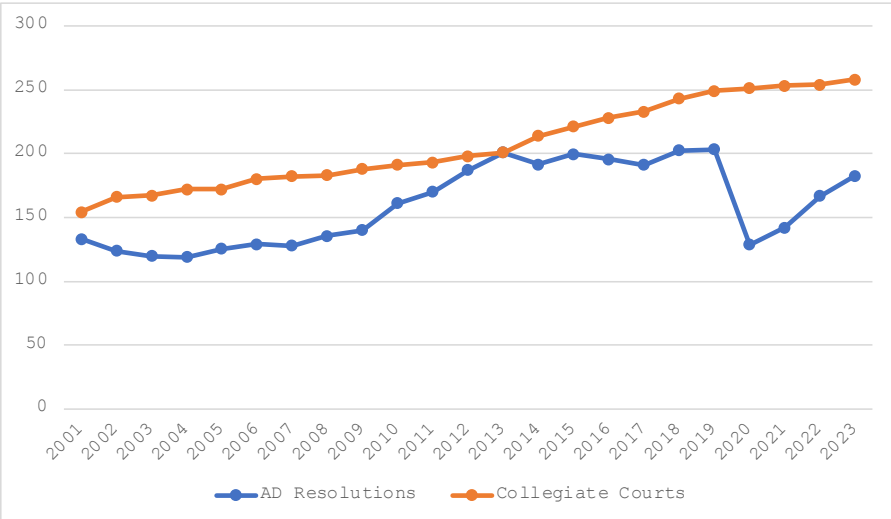
continue to grow. A clear explanation of this would require further research, but it might be a response to dynamics of internal expansion rather than a need for greater jurisdictional coverage.

Figure 2.
Number of AD per year (x 1000) vs. Number of active Collegiate Courts (2001-2023)



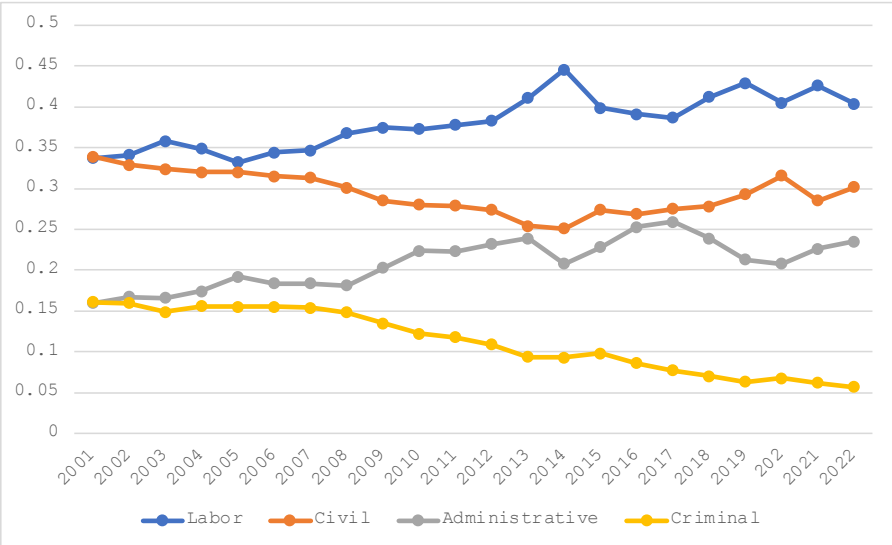
Source: Created by the author based on the annual reports issued by the Presidency of *Consejo de la Judicatura Federal* 2001-2023.

The fact that the number of AD resolved has not grown since 2013 is one of the main findings. Fix-Fierro (2020) theorized possible solutions for the "impossible task" AD posed. In his opinion, the most viable options were to maintain the status quo, limit the origin of judicial protection, improve the efficiency and quality of ordinary courts, create supreme courts or local courts of cassation, improve legal training and practice or radically change the judicial organization model.[34]

Figure 3 shows data on the resolution of AD from the Collegiate Courts by subject-matter, distributed according to the classification used by the judiciary: civil, criminal, labor and administrative matters. Distribution by subject and differentiating different types of conflicts makes it possible to see what is happening in the Mexican judiciary with greater clarity. The behavior of each of the areas was distinctive, a closer examination of this aspect is central to better understand the use of AD in Federal Courts.

[34] Héctor Fix-Fierro, El poder del Poder Judicial y la modernización jurídica en el México contemporáneo (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2020).

Figure 3.
Percentage of AD cases by subject-matter resolved by Collegiate Courts (TCC) per year (2001-2023)



Source: Created by the author based on the annual reports issued by the Presidency of *Consejo de la Judicatura Federal* 2001-2023.

It is evident how workloads have changed in recent years. There has been significantly more cases related to labor matters, which represented 33.47% of Collegiate Courts cases in 2001 and peaked at 44.68% in 2014. By 2022, it represented 42.62% of the total AD workload. In 2023, labor-related cases represented 41.97% of the entire workload. The main reason for such high numbers in labor matters is because prior to the 2017 constitutional reform, attention to labor issues in the country was dealt with outside of the formal judicial system through conciliation or arbitration at federal and local boards. The possibility of a judicial appeal was not contemplated at a first instance within this old paradigm, which is why AD was used as a second instance reviewing recourse. Although the new professionalized labor judicial system has fully entered into force since 2022, there are many processes still conducted under the rules of the previous system, so it is not yet possible to see the effect it may have on reducing the number of AD trials.

Civil matters represented between 27% and 32% of the cases. Between 2005 and 2014, it decreased from 32.0% to 25.10%, but started increasing again in 2014 to reach 31.68% in 2020. It currently stands at 30.2% in 2023. The main reason for explaining this trend in civil matters is the reform in oral trials for commercial matters in 2011, through which an administrative appeal against this type of procedure was eliminated. This meant that AD serves as a second

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instance since there is no resource to exhaust before this one. Immediate attention should be given to this procedural remedy in order to stop the increase in cases that may appear in coming years, similar to the trend seen in labor matters.

Administrative matters have had a more erratic behavior, with a slightly upward trend. The lowest year was 2008 at 18.12%, while the highest was 2017 with 25.98%, but it currently stands at 23.51%. In the realm of administrative matters, it is difficult to elucidate what is happening. According to María Amparo Hernández-Chong, recent behavior in AD for administrative matters is due to a gradual shift between indirect *amparos* and AD motivated by the sophistication and specialization in contemporary public administration.[35]

The opposite is observed in criminal matters, which showed a steady and significant decrease in cases, going from 15.60% in 2001 to 5.75% in 2023. The decrease began in 2008, with the enactment of the constitutional reform in criminal procedure, and accelerates again in 2016, the year of complete entry into force of the accusatory oral criminal system in the country at both local and federal levels.

The data shown confirms one of the hypotheses. The strongest reason explaining the lower numbers of AD trials comes from a substantial improvement in the accusatory oral criminal process. While cases in all subject matters increased in the period in question, only those for criminal matters decreased considerably. Studying why this happened is key to understanding what to do to considerably reduce the number of AD cases in other fields.

The process to reform the justice system not only in terms of AD, but also with respect to means of protection in ordinary processes in the country, has given way to a decrease in the number of matters that end up in AD. In the case of criminal matters, the eight-year limit for filing AD as established by the 2011 constitutional reform may have been important, but the changes in accusatory oral criminal processes that include various safeguards on the legality and limits on the review of actions and closure of stages, as well as the extensive use of alternative dispute resolution mechanisms and alternative solutions, have been vital.

The incorporation of a *juez de control* in the ordinary process has been of great importance. Having a judge with the power to immediately protect due process rights greatly helps relieve the federal justice system from dealing with issues by a judge present during the different stages of the adversarial process. The participation of the public defender has also been an indispensable element in a new model of control of legality in the criminal process (Fix-Fierro & Suarez-Avila, 2016).

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35 María Amparo Hernández Chong, *Enroque: la gradual inversión entre el amparo indirecto y el directo en materia administrativa y como la inversión reconfiguró el amparo judicial*, in El amparo directo en México. Origen, evolución y desafíos (Instituto de Estudios Constitucionales del Estado de Querétaro, México) (2021).

The fact that many cases are closed through an abbreviated procedure has kept collegiate courts from having to review formalities in many cases. As to other procedures like conditional suspension, plea bargaining has also been established to limit AD cases, as has the precedent established by the SCJN regarding closing stages prior to the oral trial. The decrease in the number of criminal cases filed before Collegiate Courts is the most relevant finding of the analysis. In 2001, criminal protection represented 16.01% of all AD cases; by 2023 it stood at only 5.75% of the total. This fall could be motivated by the successful implementation of the accusatory oral criminal procedural system. This data should be carefully quantified in upcoming years since it may lead to finding a solution to the classic problem of AD, insofar as a successful procedural reform can reduce the number of AD cases brought before Collegiate Courts annually. This would coincide with the hypothesis upheld in this article that the changes in the judicial reform process, not only in matters of protection but especially in the incorporation of ordinary means of protection of legality in criminal matters, would result in reducing the need to resort to AD proceedings.

To date, it is not clear that diffuse *ex-officio* constitutionality control has had a direct impact on reducing AD cases in Mexico. Although the constitutional reform enabling it is more than ten years old, its effects have yet to make themselves known. It is necessary to look further into the relationship between both forms of constitutional control to know the real impact that diffuse control might have, beyond the high expectations its adoption in 2011 may have generated at the time.

IV. Empirical Analysis of the Contemporary Problem

One of the main goals of my research is to analyze not only what has happened with the classical problem, i.e., the broad control of legality that federal courts exercise in ordinary jurisdiction, but also to address the contemporary problem. I have alluded to this problem as the need for federal courts to carry out an objective control of constitutionality and legality by issuing jurisprudential criteria. In other words, I refer to the need for control carried out by Collegiate Courts not only for a specific case, but to establish interpretative theories to solve problems in the ordinary justice system.

Traditionally, little attention has been paid to the role of the Collegiate Courts in the objective dimension because the Supreme Court has been overplayed as the entity that issues precedents in its role as a constitutional court. Despite this, since 1967 the Mexican case law system has established that Collegiate Courts can participate in establishing binding precedents (Saavedra, 2019). With the 2011 reform, the importance of Collegiate Courts in constitutional interpretation has intensified. By enabling all the judges and courts in the country to review constitutionality through *ex officio* diffuse control, the work

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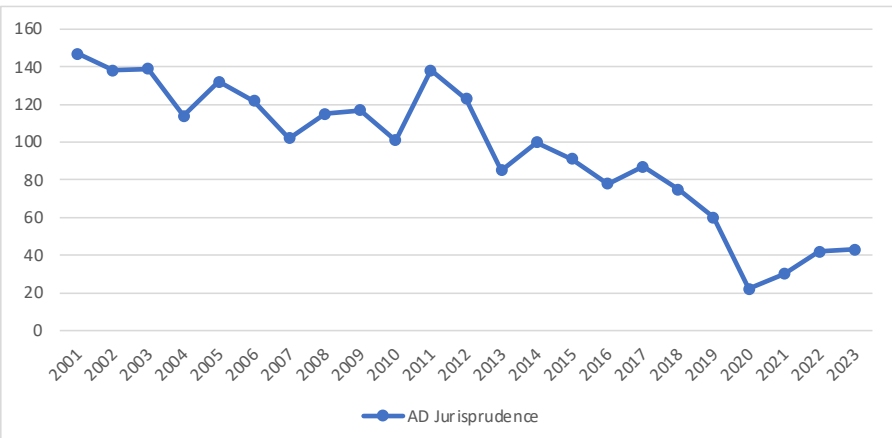
of Collegiate Courts in the constitutional system should move towards a more objective control of constitutionality, focused on establishing more precedents.

The 2011 reform modified the national case law production system distributing it between Collegiate Courts —*Plenos Regionales* (then *Plenos de Circuito*)— and the Supreme Court. The 2021 reform reiterated the importance of the evolution of Collegiate Court case law in institutional design by creating *Plenos de Circuito* to organize the precedents produced in the Federal Judiciary. Data show that despite expectations that the new institutional design for the Collegiate Courts would intensify their control of objective constitutionality, not only did they not increase the issuance of precedents in the period studied, but they even dropped to levels much lower than any forecasted.

The first indicator is the issuance of court opinions. According to Article 224 of the *Amparo Act*, Collegiate Courts can establish case law by reiteration "when they unanimously support the same criterion in five consecutive resolutions without any to the contrary. Matters of fact or law that are not necessary to justify the decision shall not be binding." Article 217 of the *Amparo Act* states that "Case law established by collegiate circuit courts is mandatory for all the jurisdictional authorities of the Federation and the states of its circuit, with the exception of the Supreme Court of Justice of the Nation, the regional plenary court and collegiate circuit courts."

Figure 4 charts the court opinions issued by all the Collegiate Courts from 2001-2023 that originate either totally or partially in AD rulings. The general downward trend has some spikes with greater activity.

Figure 4.
Total Number of Case Law Opinions Issued by Collegiate Courts by Year (2001-2023)

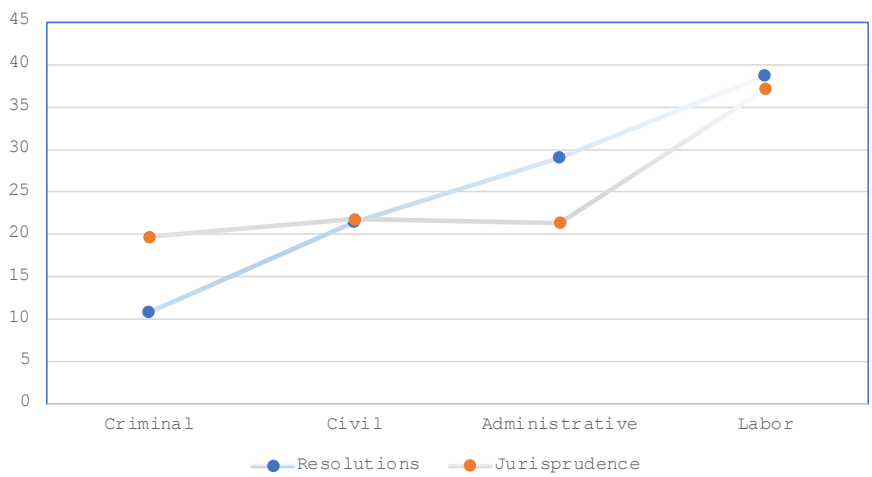


Source: Created by the author based on the annual reports issued by the Presidency of *Consejo de la Judicatura Federal* 2001-2023.

Dividing the number of AD resolutions by the number of case law opinions issued by Collegiate Courts gives us more information. In 2001, one court opinion was issued for every 1,149 AD resolved. In 2011, that number increased, requiring 1,232 AD to issue one court opinion. A decade later the number had practically tripled and by 2023, 3,379 AD were needed. In total, labor matters led to the highest number of precedents issued (547), followed by civil (321), administrative (314) and criminal (290) matters. The classification of the *Semanario Judicial* website also includes "*common matter*" (200) which generally refers to procedural issues. This ordering coincides with matters representing the greatest number of cases for the Federal Judicial Branch, although not in the same proportion.

In Figure 5, two lines are shown. The blue line corresponds to the percentage of resolutions, while the gray line corresponds to the precedents issued, by subject in both cases. A balanced proportion between both lines would show a steady balance while the difference between one indicator and the other shows the different productivity levels between them. A greater burden towards resolutions represents a greater emphasis on subjective control. A greater concentration on court opinions indicates a greater tendency towards objective control.

Figure 5.
Difference Between AD Resolutions Percentage vs. Percentage of Court Opinions Issued in the Period by Subject.



Source: Created by the author based on the annual reports issued by the Presidency of *Consejo de la Judicatura Federal* 2001-2023.

Precedents for criminal cases were issued at a higher percentage than those for everyday cases (a difference of +9.92%). The same happened in civil cases, although the difference was almost imperceptible (+0.36%). In the other two subject matters, the percentage was the opposite, favoring subjective control

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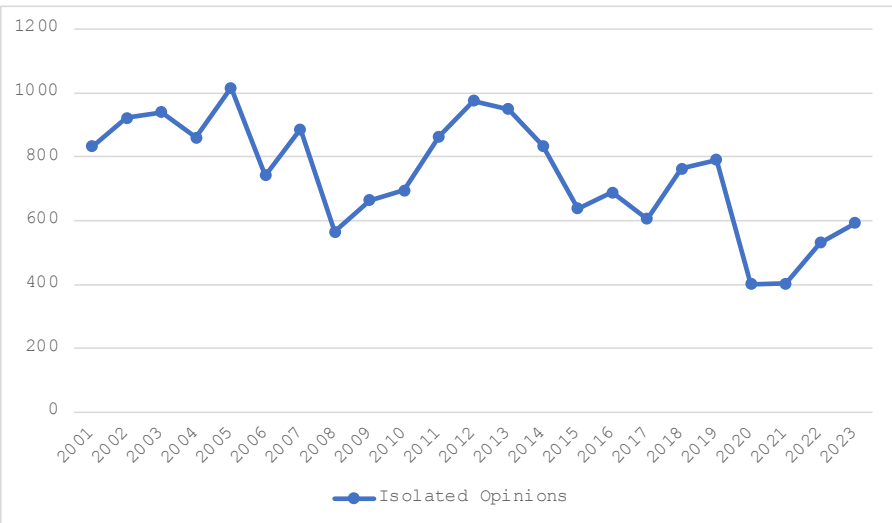
over case law. Administrative matters show the greatest difference (-7.71%) in favor of subjective control while labor issues also lean slightly towards a higher percentage than caselaw (-1.56%).

With regard to objective control carried out by Collegiate Courts, the second variable to analyze is the *tesis aisladas* [isolated opinions] in the period in question (2001-2023). Because collegiate courts can produce case law through the rule of reiteration, the first step is to issue an isolated opinion on a criterion considered important in a specific case. Between 2001 and 2023, Collegiate Court actions in this regard was erratic, going up and down. Between 2011 and 2014, there is a period of high productivity after the 2011 constitutional reform. The most notable thing is a downward trend that starts in 2015 and intensifies in 2020, the year of the COVID-19 pandemic, and then shows a slight recovery. The range of the 800 isolated opinions is an approximate average of the period under study.

Figure 6.
Collegiate Court Isolated Opinions Issued by Subject per Year (2001-2023)

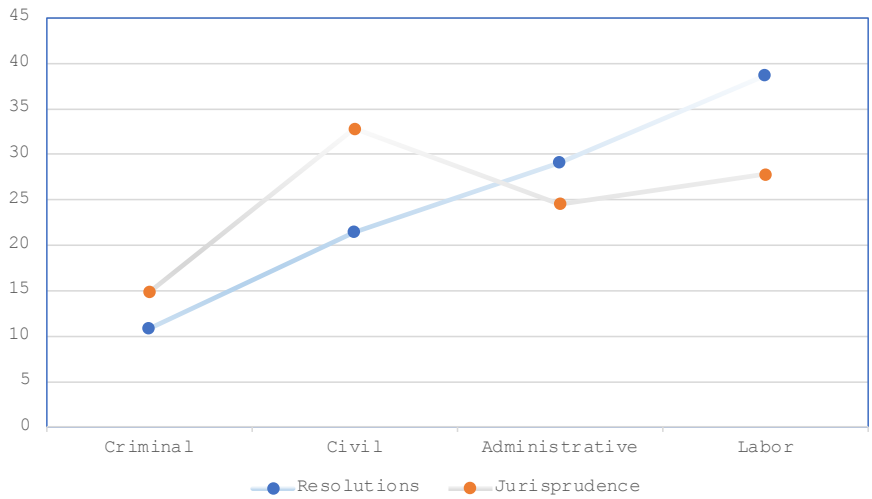


Source: Created by the author based on the annual reports issued by the Presidency of *Consejo de la Judicatura Federal* 2001-2023.

Between 2001 and 2005, more than 800 court opinions were issued each year, reaching a maximum in 2005 (with 1016). In 2006, it fell below the line for the first time (741), recovering in 2007 (886) while 2008 (565), 2009 (664) and 2010 (694) mark a period of lower activity. Then, between 2011 and 2014, each year indicates a higher number of cases than the established range, with two years 2012 (975) and 2013 (949) coming close to a thousand. After 2015, the number of cases no longer reaches 800, remaining within 600 and 700 cas-

es between 2015 (638) and 2019 (791). As of 2020 (401), the year of the pandemic, to 2023 (592), the number does not reach 600.

In Figure 8, the graph shows a difference in criminal matters in favor of objective control of 4.08. Civil matters, however, show the greatest difference in favor of objective control with 11.36%. In the other direction, administrative (-4.5%) and labor matters (-10.94%) show a reduction.



Source: Created by the author based on the annual reports issued by the Presidency of the *Consejo de la Judicatura Federal* 2001-2023.

This indicator shows that high numbers of AD resolutions have no direct impact on issuing precedents. In other words, there is no direct relationship between a broad exercise of subjective control and that of objective control, so they should be considered different activities. This separation is important for judicial policymakers since it makes evident the need for them to be established by their own means.

V. Conclusions

There are several findings that should be highlighted from the behavior observed in AD rulings by Collegiate Courts between 2001 and 2023. Since 2013, the number of cases that reach Collegiate Courts has not increased. The historical trend of a growing number of cases resolved year after year has been kept in check over the last ten years, a situation that is explained by two factors. The first is that AD on criminal matters show a sustained decrease in the number resolved year by year, a tendency attributed to the successful implementation of the accusatory oral procedural system in the country between 2008 and 2016. More research is needed to understand the specifics of how this has occurred.

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The second factor influencing the lower numbers of AD resolved as of 2020 was the COVID-19 pandemic and the changes it generated in accessibility to justice as federal Courts were closed from March 18 to July 31, 2020, with a staggered return to activities. AD temporarily migrated to an online trial service model, which has been implemented progressively. The number of resolved matters has gradually increased between 2021 and 2023 without returning to post-pandemic numbers yet.

Even though the adoption of diffuse constitutionality control through regulatory design in 2011 caused high expectations for lesser use of AD, no statistics were found indicating that it had a significant impact. Although more research is necessary, it can be concluded that the introduction of specific means of constitutionality and conventionality control in the ordinary process, like the *juez de control*, has led to a decrease in the number of AD cases in criminal matters.

The number of Collegiate Courts in this period has increased to meet the demand for AD cases, with close to 200,000 cases per year between 2013 and 2019. One hundred new courts were created in this period, increasing from 154 Collegiate Courts in 2001 to 254 today. The creation of new Collegiate Courts has slowed down in recent years, but there is no clear policy from the central administration regarding the future creation of such entities.

Regarding the use of AD by Collegiate Courts for objective control, the number of binding precedents and *tesis aisladas* [isolated opinions] is low and declining. Criminal matters present the best performance with the greatest number of court opinions with the lowest number of cases. Various hypotheses have been put forward to explain this behavior. In an interview, a federal judge noted that numbers are low because the amount of interpretable material is running out as new laws and procedural reforms are being analyzed. This is difficult to believe given the intensity of the judicial reform processes during the years in question. In my opinion, this behavior is better explained by theories of institutional rigidity.

Within the federal judiciary, there is a deferential attitude towards the Supreme Court as the one in charge of constitutional interpretation, which means that there are no incentives for Collegiate Courts to intensify their work in objective control. There was a great deal of insistence that the Supreme Court become an authentic constitutional court with the 1987 and 1994 reforms. Despite the fact that the Collegiate Courts are considered an important part of building case law in the institutional design, traditional practices in the institution have not allowed it to do this work. The strict mandatory nature of binding precedents issued by the Supreme Court has not allowed Collegiate Courts greater freedom to explore issuing their own criteria.

This study of classic and contemporary problems shows us that discussions on AD in the justice system are more relevant than ever. Although many years have passed since its creation, the challenges it faces today are just as or more complex to protect constitutionality in Mexico. AD must above all be a means of protection that corrects the flaws of a judicial system and the lack of protec-

tion of the human rights of Mexicans in general. The main question is whether it should be done extensively by ruling on tens of thousands of cases per year or if it can be done more strategically by issuing precedents. Of course, the second option is better and has the potential for greater sustainability for the justice system.

To this day, Collegiate Courts should continue to uphold the validity of this way of compensating for flaws in the justice system. But beyond that, they should promote the growth of further means of legal and constitutional protection in a way that is accessible and effective for the population in general in ordinary jurisdiction, by means of strict constitutionality control at the objective level.

Until this happens, Collegiate Courts will continue to shoulder a considerable burden of tens of thousands of AD cases. A radical reform should not be considered until ordinary jurisdiction is substantively improved. Eliminating AD without the support of ordinary jurisdiction with the means to ensure subjective constitutionality and legality would pose an enormous risk. But neither should we question the advances that ordinary jurisdiction has secured in exercising its own control in criminal matters, for example, and fall into the temptation of replacing it with AD again. Collegiate Courts must preserve the prestige that properly functioning ordinary jurisdictions have earned. Finally, *Consejo de la Judicatura* must review its policy on creating new tribunals and even begin to plan the closure of several of them to meet a more limited demand in certain cases, while remaining more ambitious in its interpretive depth.

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