ETERNAL FORMALISM: ON THE JUDICIAL REFORM IN MEXICO

FORMALISMO ETERNO: SOBRE A REFORMA JUDICIAL NO MÉXICO

Recebimento: 16 jul. 2024
Aceitação: 15 ago. 2024

Carlos Manuel López Hernández
Doctor en Derecho Constitucional y Gobernabilidad
Afiliação institucional: Universidad de Monterrey – UDEM (San Pedro Garza García, NL, México)
Lattes iD: https://orcid.org/0000-0003-0741-5391
Email: cmlhaseb@gmail.com

Como citar este artigo / How to cite this article (informe a data atual de acesso / inform the current date of access):
HERNÁNDEZ, Carlos Manuel López. Eternal formalism: on the Judicial Reform in Mexico. **Revista da Faculdade de Direito UFPR**, Curitiba, v. 69, n. 2, p. 131-146, maio/ago. 2024. ISSN 2236-7284. DOI: http://dx.doi.org/10.5380/rfdufpr.v69i2.96160. Disponível em: https://revistas.ufpr.br/direito/article/view/96160. Acesso em: 31 ago. 2024.

ABSTRACT
This study offers a critical and hermeneutic analysis of the new model for selecting judges for the Mexican Supreme Court proposed in the latest judicial reform initiative in Mexico, which aims to legitimize its members through a citizen vote. The research problem focuses on whether these changes will effectively enhance the legitimacy of the judicial system and address its perceived deficiencies. The objective is to assess whether popular elections can truly strengthen judicial legitimacy or if other factors, such as judges' formation and conduct, play a more significant role. This study employs a critical analysis of Mexican legal practices and the proposed reforms, grounded in theoretical concepts of legal formalism and legal education. The results suggest that the proposed reform overlooks some fundamental elements, such as formation (*Bildung*), which is crucial for providing a better judicial system. As a result, the emphasis on legal formalism remains a cornerstone in the teaching and practice of law in Mexico. Therefore, without overcoming this formalism, achieving a paradigm shift that improves the Mexican judicial system and brings it closer to a new vision of understanding and applying the law remains a highly complex task, perpetuating an eternal formalism.

KEYWORDS
Judicial reform. Judicial legitimacy. Legal education. Legal formalism. Suprema Corte de Justicia de la Nación (Mexico).

RESUMO
Este estudo oferece uma análise crítica e hermenêutica do novo modelo para a seleção de juízes para a Suprema Corte do México, proposto na mais recente iniciativa de reforma judicial no país, que visa legitimar seus membros por meio de votação cidadã. O problema de pesquisa se concentra em saber

se essas mudanças realmente aumentarão a legitimidade do sistema judicial e abordarão as deficiências percebidas em seu interior. O objetivo é avaliar se as eleições populares podem de fato fortalecer a legitimidade judicial ou se outros fatores, como a formação e a conduta dos juízes, desempenham um papel mais significativo. O método utilizado é uma análise crítica das práticas jurídicas mexicanas e das reformas propostas, fundamentada em conceitos teóricos de formalismo jurídico e educação judicial. Os resultados sugerem que a reforma proposta ignora alguns elementos fundamentais, como a formação (*Bildung*), que é crucial para proporcionar um sistema judicial melhor. Como resultado, a ênfase no formalismo jurídico continua a ser uma pedra angular no ensino e na prática do direito no México. Portanto, sem superar esse formalismo, alcançar uma mudança de paradigma que melhore o sistema judicial mexicano e o aproxime de uma nova visão de compreensão e aplicação da lei torna-se uma tarefa altamente complexa, perpetuando um formalismo eterno.

PALAVRAS-CHAVE
Reforma judicial. Legitimidade judicial. Educação jurídica. Formalismo jurídico. Suprema Corte de Justicia de la Nación (México).

INTRODUCTION

Similar to what occurs in other Latin American states, Mexico remains a country where legal education and practice have not managed to overcome legal formalism. This implies that theoretical proposals – such as theories of argumentation and legal interpretation – remain overshadowed by a tradition anchored in the past, in a system that, despite incorporating a human rights model into its constitution, still pursues ideals from the early 20th-century guarantee system.

Luhmann (2005, p. 62, translation ours), for instance, notes that "theories emerging from practice are rather a collateral product of the need for solid decision-making". Therefore, ample room remains for other types of issues that are not immediately visible.

Consequently, legal education in Mexico is almost disconnected from legal reality, as it is not possible to reconcile these two foreign paradigms. Gény (2000, p. 20, translation ours), for example, expressed concern about the blind faith that some jurists had in formalism:

> Dominated, fascinated by the results of codification, modern French commentators, implicitly at least, have accepted as a postulate the idea that formal legislation, i.e., the body of legislative acts promulgated and in force in France, should suffice to reveal all the legal rules needed in the field of private law for the needs of social life.

In this context, Mexico continues to rely on formalism as a solution to all the legal difficulties that arise in Mexican society, and at the same time, as a magic wand that dissipates the complexities of paradigm incommensurability highlighted by Kuhn (1996, p. 111 *et seq*.) because nothing can really change without changing the way of thinking.

Thus, although Mexico has made several reforms to its judicial system in the past twenty years, these changes have not produced the expected effect, especially when analyzing how the

judicial function unfolds, which remains mired in a whirlwind of complexities that cannot be resolved merely by creating or modifying laws.

This could also be the main reason why the federal executive deemed it appropriate for the judiciary to gain legitimacy through a model of selecting judges, magistrates, and ministers via popular vote. The Mexican president is seeking a constitutional reform to introduce a new model where there would be nine ministers instead of eleven (as is currently the case).

This procedure is intended to be carried out through a call issued by the Senate, in which the federal executive will nominate ten candidates; the legislative branch will propose five from each chamber, and finally, the Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation, SCJN) will propose another ten. This implies that articles 94, 95, 96, 97, 99, 100, 116, and 122 of the Mexican Federal Constitution will need to be amended.

However, this proposal does not sufficiently address the problems generated by formalism, as changing the selection model for judges will not make the judicial system more reliable or effective.

Primarily, because the reform project omits a substantial element, such as the judicial career, which has been persistently neglected: in Mexico, there are no institutions that teach how to become a judge. Thus, formation (*Bildung*) becomes an indispensable element for understanding legal problems differently as they develop in legal practice, one that can help transcend mere instrumental knowledge. Things such as hermeneutics, argumentation, and deontology are overlooked, even though they are important aspects of being a judge.

This paper will analyze, from a hermeneutic perspective, why investing in a formation model is a preferable option to strengthen the judiciary at all levels, since this critical issue for the administration of justice is ignored and forgotten by those who naively believe that merely changing to direct voting for judges, magistrates, and ministers will develop a better judicial system. Thus, the original measure does not overcome the issues related to legal formalism, which is why the same cycle of change without change persists, and formalism becomes eternal.

1 A SUMMARY OF THE CONSTITUTIONAL REFORM INITIATIVE FOR THE FEDERAL JUDICIARY IN MEXICO

First, it is necessary to explain the proposal to reform the federal judiciary in Mexico, a topic that has been quite recurrent in recent years. It is also important to note that, for the purposes of this study, only the position of minister of the Supreme Court of Justice will be addressed.

With these considerations in mind, this proposal generally focuses on changing the current method of selecting judges, magistrates, and ministers who belong to the federal judiciary[1], along with other relevant issues, including:

1. Reduction of ministers: The proposal suggests reducing the number of ministers from eleven (currently) to nine.

2. Abolishing the Chambers of the SCJN: It is proposed that the Court operate solely in Plenary; furthermore, it aims to reduce the qualified majority needed to set binding precedents and constitutional rulings from eight to six votes.

3. Popular Vote: It is proposed that SCJN ministers be elected through direct elections by the Mexican people – rather than being appointed by the federal executive and confirmed by the Senate – to increase the democratic legitimacy of the federal judiciary.

4. Efficiency and transparency: The popular vote could help make the process more transparent and make ministers feel more accountable to the public. Additionally, it is expected to increase citizen participation and interest in the judiciary, potentially leading federal entities in Mexico to join the project and reform their judicial systems in the future.

5. Extraordinary election: An extraordinary election is proposed, which would be convened by the Senate thirty calendar days after the reform decree comes into effect, to renew all judicial positions; this includes judges, magistrates, and ministers.

6. Ordinary election of judges: It is stated that the election of ministers would occur during the ordinary electoral process for executive and legislative positions.

7. Model for selecting ministers: The Senate will issue a call for candidates; the federal executive can nominate up to ten candidates for election; the legislative branch can select up to five candidates (per chamber), and the SCJN up to ten, totaling thirty candidates. The Senate itself will evaluate the profiles and send them to the National Institute of Elections and Consultations (INEC) to organize

[1] Currently, the selection model for federal judges and magistrates requires passing a competitive exam. In contrast, the selection model for becoming a minister involves a system of ternas (shortlists) proposed by the federal executive, from which one candidate is approved by the Senate of the Republic. If the shortlist is rejected, a new one is proposed. If this new shortlist is also rejected, the appointment is made at the discretion of the federal executive.

the process.

8. Compliance with article 127, section II, of the Federal Constitution: It is reiterated that no public official may receive compensation greater than that of the federal executive for performing their duties[2].

9. Elimination of retirement benefits for ministers: It is proposed to eliminate pensions for ministers who have completed their terms, reducing the term from fifteen years (current) to twelve.

10. Legislative adjustment: A period of one hundred eighty calendar days is set for the Congress of the Union and local legislatures to make the necessary reforms to adjust federal legislation and local constitutions. Meanwhile, the provisions of the Federal Constitution will apply.

All these points (and others affecting judges and magistrates of the federal judiciary) have raised concerns in Mexican society. For example, there are warnings that these changes could lead to the politicization of justice and the federal judiciary, as the proposal of a popular election of candidates might lead to campaigns and populist positions aimed at gaining votes. However, many people hope that this change will lead to greater trust in judges.

Additionally, questions arise about whether candidates for the SCJN would have the appropriate profile for the position, considering that electoral campaigns might focus on aspects other than technical and professional suitability. However, this concern has always existed and is not a direct consequence of the initiative.

For the same reason, none of these concerns address the issue of judicial formation in general, especially for ministers, as the current judicial career model in Mexico exempts them from competitive examinations. Therefore, some criticisms are unfounded, particularly those questioning the necessary knowledge and competencies of potential candidates for performing judicial functions.

Thus, focusing on formation becomes a key element if the goal is to improve the judicial system. For instance, developing strategies to better organize the Judicial School is a good start; from there, it would be possible to implement models that foster the creativity of judges, where hermeneutics could be very helpful – a step beyond legal formalism.

In conclusion, as can be seen, this reform has deep implications for the Mexican judicial system, and its implementation would require a significant restructuring of the judicial selection

[2] According to the "ACUERDO mediante el cual se expide el Manual de Percepciones de los Servidores Públicos de las dependencias y entidades de la Administración Pública Federal", Anexo 3B (https://tinyurl.com/4v8336fd), the maximum total monthly salary for the federal executive in 2024 is $166,434 m.n. ($9,736 USD according to the average exchange rate for July 2024). However, at present, some ministers receive a higher salary than the president. *Cf.* "Presupuesto de egresos de la federación para el ejercicio fiscal 2024" (Secretaría de Hacienda y Crédito Público – SHCP –, 2023, p. 90, 92, and 95 (https://tinyurl.com/4dx29t2p).

process. It is a complex issue that generates both support and skepticism in various sectors of society and politics.

2 HOW HAVE JUDGES LOST LEGITIMACY IN MEXICO?

Once the initiative for reforming the federal judiciary has been explained, it is necessary to address the next point, which concerns the legitimacy of judges. Therefore, if the issue with the proposed constitutional reform to the judiciary focuses on the legitimacy of judges, the first question should be why trust in Mexican judges has eroded and how it can be restored.

Generally, the judiciary is not often criticized by civil society, as its work is largely unknown to the general public. However, with the change in government in 2018, "the public life of the Mexican state has become more public" (Concha *et al*., 2004, p. 37 *et seq*., translation ours). Today, for instance, Mexican society is more attentive to the political environment, leading citizens to become more informed about constitutional reform projects and the legal process for their approval or rejection through judicial review by the SCJN, which functions as a constitutional court.

Another relevant aspect arose when, less than a month into the new federal executive's term, Mexican society learned about the high incomes of SCJN[3] ministers – a surprising issue considering that, until 2018, the Mexican state had over 51,890,000 people living in poverty, according to data from the National Institute of Statistics and Geography (INEGI)[4]. This situation does not align well with one of the current federal executive's main policies, which is austerity, as: "there cannot be a rich government with a poor people"[5].

From then on, public scrutiny began to monitor the actions of the federal judiciary, especially those of the SCJN, which intensified following the change in the court's presidency, with Norma Lucía Piña Hernández assuming office and remaining distant from executive and legislative dialogues – a contrast to the previous president, and former minister of the highest court, Arturo Zaldívar Lelo de Larrea, who had engaged with the federal executive to initiate dialogue aimed at reforming the

[3] According to official data, the total monthly income of a minister of the SCJN is $792,258 m.n. ($46,594 USD, according to the average exchange rate for July 2024).

[4] *Cf*. https://tinyurl.com/swkdfa43.

[5] This phrase ("no puede haber gobierno rico con gobierno pobre", in Spanish) is attributed to José Martí, a prominent Cuban poet and thinker of the 19th century. Martí believed that corruption and lack of ethics in government directly affect fairness and justice in society. In this context, his phrase reflects the idea that wealth and economic power should be accompanied by a just and ethical government to avoid inequalities and corruption. Similarly, this phrase has been cited multiple times by Andrés Manuel López Obrador, the current president of Mexico, to express his concern about equity and corruption in government; an idea aligned with his message about the need for a public administration that acts with honesty and works for the benefit of all citizens, especially the most disadvantaged.

federal judiciary, culminating in a new judicial reform in 2022 focused on the judicial career.

However, despite increased public involvement in recent years, it appears that citizen demands align with the federal executive's rhetoric, which has failed to recognize that changing the model for selecting judges, magistrates, and ministers does not necessarily legitimize or strengthen the judicial system. It also overlooks the reasons why the formation of judges is important, as they need to adhere to the law, not to their personal desires or political demands. This matter requires deeper examination.

Thus, it is unclear how judges elected by popular vote will necessarily improve the delivery of justice, nor how potential issues of the politicization of justice can be avoided. This could result in judges following patterns aligned with public interest, meaning their decisions might not address the substance of issues but rather respond to majority demands, even if those demands are contrary to the constitution.

For example, judicial independence would not be questioned in cases where judges do not decide according to majority interests, as it is now; instead, there would be more opportunities for dialogue and understanding of the judicial function. Therefore, attention should focus on the problems generated by legal formalism, a tradition deeply embedded in judges' understanding.

Detailing why legal formalism remains prevalent in Mexico is a Herculean task. However, some important data is worth considering: *1*. In Mexico, there is no specialized preparation for judges, prosecutors, or other legal professionals; universities predominantly offer a single perspective for understanding, analyzing, thinking about, and applying the law, which is that of the lawyer[6]; *2*. The judiciary still believes that analytical capacity for performing judicial functions is an innate trait rather than the result of proper training, which is why the judicial career is understood as a hierarchical system (Caballero Juárez, 2006, p. 290); *3*. Notable formalistic tendencies in judicial practice are expressed in rulings, case law, and even in judicial dissemination methods (Atienza Rodríguez, 2013, p. 49 *et seq*.); *4*. There is a constant rejection of non-positivist legal models, especially interpretative ones, as it is still believed that legal texts must be closed and written in a Cartesian style of *clarity* and *distinction*, leaving no room for interpretation[7].

---

[6] *Cf.* SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (SCJN). **Palabras del Ministro Luis María Aguilar Morales, Presidente de la Suprema Corte de Justicia de la Nación y del Consejo de la Judicatura Federal en la ceremonia con motivo del *Día del Abogado*, celebrada en el salón *Adolfo López Mateos* de la Residencia Oficial de los Pinos**. SCJN, Ciudad de México, 2024. https://tinyurl.com/mrxaf7m6.

[7] *Cf.* SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (SCJN). Exacta aplicación de la ley penal. La garantía, contenida en el tercer párrafo del artículo 14 de la constitución federal, también obligan al legislador (Jurisprudencia por reiteración). **Semanario Judicial de la Federación y su Gaceta**, Ciudad de México, t. XXIII, p. 84, registro 175595, 2006.

Therefore, the focus on the illegitimacy of judges should not be on how they are elected, but rather on how they understand and apply the law.

3 PROBLEMS IN LEGAL EDUCATION (*FORMATION*) IN MEXICO

All the above naturally leads to considering how legal education in Mexico is structured and what its inherent problems are. It is well known that, since the second half of the 20th century, the field of law has undergone significant changes, both in its static and dynamic aspects. However, it is no secret that the conception of law remains confined to a set of legal norms where knowledge of current law is the primary differentiator.

> Professional legal studies in most Mexican law schools or faculties follow general curricula that provide graduates with a broad overview. However, it must be acknowledged that they do not provide specific formation for various legal activities such as judicial roles, public prosecution, notarial work, etc. (Flores García, 1984, p. 113, translation ours).

Thus, in legal education, the primary focus is on what the code says. Only later, as one progresses, does attention shift slightly towards studying case law, which primarily interests lawyers and judges. In Mexico, for instance, jurisprudence from the SCJN – that is, legal interpretations and decisions made in the courts and within significant political contexts – extends to international courts such as the Inter-American Court of Human Rights (CIDH).

In this manner, however, there is no opportunity to critically think about the law; it becomes nearly impossible to cultivate judges who can employ their imagination. Nor would it encourage them to be more creative in making sound, rational decisions or in generating persuasive arguments. They would not even be able to use hermeneutics to gain a new, holistic understanding beyond formalism. A thorough examination of this issue could alter the prevailing perspective.

In summary, the study and teaching of law are, in a certain way, limited to presenting the essence of the law, as some prominent authors, including Calsamiglia (1993, p. 161), assert. Therefore, the notion that “it seems everything has already been said”, as Atienza Rodríguez and Ruiz Manero (2007, p. 8, translation ours) suggest, resonates within legal education. Despite new proposals – such as the approach of law as argumentation – the foundation remains rooted in legal theory from before the second half of the 20th century, which is disconnected from contemporary legal reality.

Consider the *paradigm shift* from a system of guarantees to one of fundamental rights as established by the constitutional state. Or consider the non-positivist legal theories that have sought to give greater prominence to moral considerations within the legal framework. Thus, Larenz’s (1980, translation ours) statement: “no one can seriously claim that the application of legal norms is merely

a logical subsumption under abstractly formulated major premises" is not definitive. Rather, it still harbors mysteries.

Therefore, upon closer examination, it becomes evident that the situation differs entirely when the focus shifts from 'why' to 'how', as legal positivism has been in crisis for over 70 years and seems unlikely to change soon, even with the breakdown of some mechanisms that project the inclusion of principles such as *pro homine*, since the old tradition of *Gesetz als Gesetz* ("the law is the law") still prevails.

For various reasons, judges in Mexico believe they can *discover* the answers to all legal problems in a manner reminiscent of Shakespeare's *The Merchant of Venice*. However, few recognize the consequences of a mechanistic application of the law.

Attempting to contradict this assertion opens the door to revealing another major problem in legal education – one that reinforces the initial argument – as it would not be a fallacy but a sophism. Law faculties lack an approach to hermeneutics; instead, there is an irrational fear of what lies beyond literal interpretation. The same can be said regarding knowledge of Logic and Argumentation:

> It is evident that specialized training is required to know where to look and how to comprehend the arcane vocabulary used in judicial decisions. A layperson lacks this training and vocabulary, whereas lawyers do, and therefore, no controversy exists among them regarding whether the law provides compensation for injuries caused by a colleague, for example (Dworkin, 2012, p. 15, translation ours).

Thus, the difference does not lie in the ability to interpret, argue, or use technical knowledge to decipher the vocabulary of judicial rulings or to apply an alternative logic, such as deontic logic or another divergent form of reasoning. The difference lies in knowledge of the legal system.

Formal legal studies typically begin at the university level, and it is only after attaining a doctoral degree that one achieves rigor in their knowledge, understanding law not merely as a norm but as something much more. One might ask: Is it necessary to wait so long?

Ignoring that law is more than just a norm leads to several significant issues, as law influences people and can transform them in various ways:

> The way judges decide cases is crucial. It matters most to those who are unfortunate, litigious, or merely in court because they are perceived as too saintly or otherwise. Learned Hand, one of the most distinguished and renowned American judges, stated that he feared a trial more than death or taxes. […] The difference between dignity and ruin can hinge on an argument that might not have struck another judge with the same force, or even the same judge on another day. Individuals can gain or lose more from a judge's assent than from any act of Congress or Parliament (Dworkin, 2012, p. 12, translation ours).

As Atienza Rodríguez (2013, p. 49, translation ours) notes, formalism is not the only affliction affecting the law – that is, those who interpret and apply it – "but it is perhaps the most

pernicious in Latin countries due to its endemic nature in our legal culture". This implies that it is also an issue related to education, as it reflects "a way of understanding the law in which the judge feels bound only by the text of the current legal norms, and not also by the reasons underlying them" (Atienza Rodríguez, 2013, p. 50, translation ours).

Therefore, diagnoses like Dworkin's do not reflect the reality in Latin countries, as "a formalistic resolution is often written in a way that an educated reader, even a legal professional, does not understand or at least does not easily understand" (Atienza Rodríguez, 2013, p. 50, translation ours). Consequently, the use of obscure and evasive language is a common characteristic of legal formalism.

In conclusion, if genuine change in Mexico's judicial system is desired, efforts should focus on more profound issues than those mentioned in the proposed constitutional reform of the federal judiciary. And to start, what could be more essential than addressing the issue of legal education?

4 ANALYTICAL CAPACITY: SOME IRONIES OF THE JUDICIAL CAREER

For years, the topic of a judicial career has been frequently discussed, but progress has been very slow. Del Río Govea (1960, p. 522, translation ours) noted that "[…] it has not yet been fully achieved that judges are appointed according to rules that demonstrate their legal capacity, their moral character, honesty, good conduct, and, most importantly, their knowledge to apply the Law […]". However, similar to Flores García, his intention was not to create a model for teaching how to become a judge but rather to propose "[…] the idea of a transition through stages or progressive steps […]" (Flores García, 1960, p. 355, 1967, p. 253, translation ours). To be a judge, one must learn how to be one. However, this cannot be achieved by assuming that judges are simply lawyers who have chosen to dedicate themselves to the judiciary.

Vázquez Esquivel (2008, 2009) has argued that the ethos of jurists differs significantly depending on their professions. He also points out that there are antagonistic values among lawyers and judges that, in theory, can be understood quite well, but in practice, seem to cloud everyone's judgment.

Therefore, the starting point should not be a discussion of the various mechanisms for selecting judges or the different possible filters for entering and advancing in the judicial career. Instead, the focus should be on defining the peculiarities of the judicial function – its *ethos*. Of course, instrumental knowledge in the formation of a judge is important, but this distracts from what is desirable in the judicial function, making it an irony.

Moreover, it is legitimate to question who should be entrusted with the role of judge. This is mainly because SCJN ministers are not necessarily individuals with extensive experience in administering justice or even the best at doing so, as the current selection model is based on a ternary model proposed by the federal executive and must be approved by the state. This has historically resulted in ministers of great ability, but also in others lacking it. Therefore, it becomes ironic that the highest court is not composed of the best judges in the country, as they are detached from the hierarchical scheme of the judicial career in Mexico.

This issue recalls what Podetti (1942, p. 113, translation ours) once stated about the judicial career: "to enter the judiciary and undertake the difficult and august mission of 'administering justice', one only needs […] to obtain a qualifying university degree and have a friendship with some influential political leader". This is technically equivalent to the requirement of the current Mexican Federal Constitution.

Additionally, it is noteworthy that one of the main concerns of current judges, magistrates, and ministers of the federal judiciary is that the competitive exams proposed by the reform initiative might become secondary, as two-thirds of the candidates depend on the executive and legislative branches. However, as Caballero Juárez points out, "[…] to compete to become a judge, it seems that what is required is precisely not having judgment" (*apud* Ortega García, 2021, p. 281, translation ours). This is because the opposition exam questionnaires generally consist of questions derived from contradictions in rulings issued by the SCJN, so instead of respecting the candidate's analytical capacity, what is demanded is memorization. This is another irony, as the concept of objectivity is misinterpreted, and the independence supposedly defended is simultaneously restricted.

Worse still, these ironic issues go unnoticed by current judicial officials and become apparent when it is claimed that "popularly elected judges will hardly possess this knowledge"[8] meaning knowledge of recent jurisprudence, with the argument that there would be a lack of certainty. It also turns out that jurisprudence is seen as being above the Law, which is a major issue.

Another irony is that the judicial career pyramid is *inverted*, which means that in Mexico there are more magistrates than judges; by necessity, the base of a pyramid is larger than its top, something that does not occur. Additionally, not all judicial officials are interested in advancing their careers; some are content with lower positions (or positions with less responsibility), or they decide

[8] *Cf.* SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (SCJN). **Análisis de la iniciativa de reforma al Poder Judicial de la Federación**. Problemas asociados con la iniciativa de reforma constitucional del Poder Judicial presentada el 5 de febrero de 2024. SCJN, Ciudad de México, 2024, p. 26, translation ours. https://tinyurl.com/jexrszc9.

to leave. Therefore, there are more problems without solutions despite the existence of individuals uninterested in growth. Caballero Juárez explains it somewhat better:

> […] it is assumed that in a healthy Judiciary, the idea of development and growth in the judicial career is to start from the bottom and gradually move up. Theoretically, there should be more judicial clerks than secretaries, more secretaries than judges, and more judges than magistrates. But here, this does not occur; this is a problem of politics and management within the Judiciary, and I do not see that it was considered when decisions were made […] (*apud* Ortega García, 2021, p. 277, translation ours).

Finally, these ironies make legal formalism more palpable, as there are visible remnants in judicial practice. As Atienza (2013, p. 50, translation ours) aptly notes, in such a situation, "[…] there would be no rule of law, simply because the rule of law would have become the rule or government of judges".

5 FORMALIST VESTIGES IN JUDICIAL PRACTICE

The first sign is found in judicial rulings, as it is neither accidental nor uncommon for judicial decisions to be written in a convoluted legal language, which, in many cases, is even unintelligible to legal professionals. This is a common characteristic of formalism, meaning that judicial resolutions are not fully understood. For example, this has led to the practice of discussing a motion to clarify a judgment, a legal concept that was not included in the relevant law until 2013. Therefore, the existence of such a legal figure, precisely, is indicative of legal formalism.

Another sign consists of the constant defense of legal certainty or due process. These issues are highly noticeable in the analysis document of the constitutional reform initiative on the federal judiciary with the SCJN's seal. In this context, it seems unlikely that a citizen would prioritize the certainty provided by SCJN's jurisprudence over being judged fairly.

A third sign is related to procedural elements. It is no coincidence that judicial resolutions often focus more on procedural form than on substantive issues. Therefore, within the Mexican legal community, there is a motto that the primary function of an amparo judge[9] is to "find reasons for its inadmissibility" (reasons for dismissing the case) before the principal matter.

As a fourth sign, logical rigor appears as the sole reliable source of reasoning, overshadowing other types of divergent logics, such as the logic of understanding. Thus, no opportunity is given to

[9] In Mexico, an "amparo judge" is a judge specialized in the processing and resolution of amparo trials. This trial is a mechanism for protecting human rights and individual guarantees enshrined in the Federal Constitution. It is initiated by citizens who believe their rights have been violated by an act of authority, which can be legislative, administrative, or judicial.

other legal paradigms.

Finally, a fifth sign relates to the incessant promotion of judges' profiles as professionals, neutral, impartial, objective, and independent, but the interpretation of each of these virtues is often unclear. For instance, it has already been pointed out how *objectivity* is understood by the SCJN, which apparently is only achieved when lower courts apply the criteria established by jurisprudence.

Of course, these are not the only traces of legal formalism present in judicial practice, but they are sufficient to highlight the main issue in this study, which is the importance of legal education as an appropriate measure for strengthening the judicial institution in Mexico.

In a world where the constitutional state has become so vibrant, the federal judiciary, at least in Mexico, cannot continue to be seen as an institution detached from the public. It should be even less ignored that its decisions affect political life. Whether the Mexican legal community likes it or not, judicial decisions are a kind of *political message* to everyone, as judges are the ones who ultimately decide which reform proposals are consistent with the constitution. Hence, the issue of legal education remains crucial.

6 CONCLUSIONS

Thus, in countries where formation has not been given importance, the perception indices of the rule of law do not yield desirable results, despite constant updates in the necessary knowledge for administering justice. This is detailed in the latest World Justice Project: Rule of Law Index 2023 report. For example, the United States ranks 26th, while Mexico ranks 116th out of 142 countries studied[10]. This means that despite the SCJN's statements, the rule of law is related to how citizens understand the judicial task.

On one hand, Mexico does not have a proper educational model that differentiates legal professions. This has led to the mistaken idea that a legal professional can be a prosecutor today, a notary tomorrow, and a public official or SCJN minister the day after, as if none of these professions required specific formation, on the assumption that the lawyers' analytical capacity is the same for all those functions, which is wrong.

On the other hand, as has been discussed, Mexico still lacks a true judicial career path to establish a solid rule of law and a successful legal education model, such as the National School of

[10] *Cf*. World Justice Project*: Rule of Law Index 2023*, p. 22 *et seq*.

Magistracy (ENM) in France (1958)[11]. Instead, Mexico continues to rely on technical and instrumental elements as if they were mere superficial fixes. Additionally, issues related to judicial independence, impartiality, and other important areas, such as the judge selection process, should be considered.

Certainly, the latter is perhaps the most striking, as pointed out by Villegas (2016), the judiciary no longer has individuals properly trained in administering justice. Instead, the system itself has led to key positions being occupied not by judges *per se*, but by politicians, who are categorized by the judiciary as *political judges*. However, beyond this controversy, what weighs more is Badinter's observation that judges must have a certain degree of *ingratitude* towards those who appointed them, which can only be the result of their formation.

As Dworkin (2012, p. 15, translation ours) has insisted, the world of law today is understood as the "age of judges", but few realize that the law has ceased to be monotonous and has evolved. The observation of the norm is no longer an absolute parameter for resolving legal disputes; rather, an effort beyond what logic prescribes is needed. The science of law is not about a cognitive understanding of nature but is a practical function, which involves resolving social conflicts (Atienza Rodríguez, 1994, p. 64). Hence, formation becomes critically important.

Therefore, instead of focusing on the best mechanism for selecting judges, it is crucial to first address questions such as: Where and how are judges formed in Mexico? Additionally, what kind of formation have those already in the judiciary received? How they understand the law? In the end, all this pertains to an ethical and hermeneutic issue.

REFERENCES

ATIENZA RODRÍGUEZ, M. **Curso de argumentación jurídica**. Madrid: Trotta, 2013.

ATIENZA RODRÍGUEZ, M. Las razones del derecho. Sobre la justificación de las decisiones judiciales. **Isonomía**: Revista de Teoría y Filosofía del Derecho, [*s. l.*], n. 1, octubre 1994.

ATIENZA RODRÍGUEZ, M.; RUIZ MANERO, J. Dejemos atrás el positivismo jurídico. **Isonomía**, [*s. l.*], n. 27, octubre 2007.

CABALLERO JUÁREZ, J. A. El perfil de los funcionarios judiciales en la unidad jurisdiccional. **Revista de del Instituto de la Judicatura Federal**, [*s. l.*], n. 22, p. 281-312, 2006.

CALSAMIGLIA, A. ¿Debe ser la moral el único criterio para legislar? **Doxa**. Cuadernos de

[11] *Cf.* FLORES GARCÍA, F. La carrera judicial. **Revista de la Facultad de Derecho en México**, [*s. l.*], t. XVII, n. 65, enero-marzo 1967, p. 249 *et seq*.

Filosofía del Derecho, [*s. l.*], n. 13, p. 161-178, 1993.

CONCHA, H. *et al*. **Cultura de la constitución en México**: una encuesta nacional de actitudes, percepciones y valores. México: Universidad Nacional Autónoma de México, Tribunal Electoral del Poder Judicial de la Federación, Comisión Federal de la Mejora Regulatoria, 2004.

DEL RÍO GOVEA, M. Implantación de la carrera judicial en México. **Revista de la Facultad de Derecho en México**, [*s. l.*], t. X, n. 37, 38, 39, 40, enero-diciembre 1960.

DWORKIN, R. **El imperio de la justicia**. De la teoría general de derecho, de las decisiones e interpretaciones de los jueces y de la integridad política y legal como clave de la teoría y práctica. Traducción: Claudia Ferrari [título original: Law's Empire]. Barcelona: Gedisa, 2012.

FLORES GARCÍA, F. Implantación de la carrera judicial en México. **Revista de la Facultad de Derecho en México**, [*s. l.*], t. X, n. 37, 38, 39, 40, p. 355, enero-diciembre 1960.

FLORES GARCÍA, F. La carrera judicial. **Revista de la Facultad de Derecho en México**, [*s. l.*], t. XVII, n. 65, enero-marzo 1967.

FLORES GARCÍA, F. La independencia judicial y la división de poderes. *In*: CARPIZO, J.; MADRAZO, J. (coord.). **Memoria del III Congreso Nacional de Derecho Constitucional**. México: Universidad Nacional Autónoma de México, 1984.

GÉNY, F. **Método de interpretación y fuentes sociales en Derecho privado positivo**. Albolote: Editorial Comares, 2000.

KUHN, T. S. **The Structure of Scientific Revolutions**. 3. ed. Chicago: The University of Chicago Press, 1996.

LARENZ, K. **Metodología de la ciencia del derecho**. 2. ed. Barcelona: Ariel, 1980.

LUHMANN, N. **El derecho de la sociedad**. 2. ed. Barcelona: Herder, 2005.

ORTEGA GARCÍA, R. Entrevista con el Doctor José Antonio Caballero Juárez, sobre la Ley de carrera judicial del Poder Judicial de la Federación. **EX Legibus**, Ciudad de México, n. 14-15, 2021.

PODETTI, J. R. **Teoría y técnica del proceso civil** (ensayo de una sistemática del derecho procesal argentino). Buenos Aires: Editorial Ideas, 1942.

SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (SCJN). **Análisis de la iniciativa de reforma al Poder Judicial de la Federación**. Problemas asociados con la iniciativa de reforma constitucional del Poder Judicial presentada el 5 de febrero de 2024. SCJN, Ciudad de México, 2024.

SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (SCJN). Exacta aplicación de la ley penal. La garantía, contenida en el tercer párrafo del artículo 14 de la constitución federal, también obligan al legislador (Jurisprudencia por reiteración). **Semanario Judicial de la Federación y su Gaceta**, Ciudad de México, t. XXIII, p. 84, registro 175595, 2006.

SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (SCJN). **Palabras del Ministro Luis María Aguilar Morales, Presidente de la Suprema Corte de Justicia de la Nación y del Consejo de la Judicatura Federal en la ceremonia con motivo del *Día del Abogado*, celebrada en el salón *Adolfo López Mateos* de la Residencia Oficial de los Pinos**. SCJN, Ciudad de México, 2024.

VÁZQUEZ ESQUIVEL, E. El entroncamiento del problema hermenéutico con el deontológico en la formación de los operadores del derecho en México (primera parte). **Conocimiento y Cultura Jurídica**, Monterrey, México, a. 2, n. 4, jul./dic. 2008.

VÁZQUEZ ESQUIVEL, E. El entroncamiento del problema hermenéutico con el deontológico en la formación de los operadores del derecho en México (segunda parte). **Conocimiento y Cultura Jurídica**, Monterrey, México, a. 3, n. 5, enero/jun. 2009.

VILLEGAS, J. **El poder amordazado**. La historia oculta de cómo el poder político se ha infiltrado en la justicia española. Barcelona: Ediciones Península, 2016.