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The entrance to the Supreme Court in Mexico City.

LAW

Populism and Challenges to Judicial Independence in Mexico

By Mónica Castillejos-Aragón

Liberalism has been challenged in recent years in Mexico. Under false pretenses of austerity and asceticism, the political establishment is using its electoral mandates to destabilize liberal institutions that are essential pillars of democracy. Not even the judiciary has been immune to such overreaching disruption. On multiple occasions and fronts, the bench has been under attack by political elites, forcing concessions of the judiciary's independence as well as its long-standing process of institutional renovation and progress, as I have described in past research (Castillejos-Aragón, 2013). A look at the political trajectory of President Andrés Manuel López Obrador (AMLO), gives new insight into the enabling conditions for such political intervention in democratic institutions and also informs our understanding of the rise and consolidation of an interbranch populist government in Mexico.

To paraphrase the language of Jan-Werner Müller, AMLO has claimed that he, and only he, represents *el pueblo*, “the people” (Müller, 2016). President López Obrador has successfully promoted a notion of “holism” that fosters the possibility for “the people” to be as one and for all of them to find themselves mirrored in a true representative: Andrés Manuel López Obrador. Such representation relies on the notion that some of “the people” (the poor, the less advantaged, the uneducated, the common people) are certainly the ones who matter the most, because the “others”—the elites, the opposition, whom AMLO calls “the adversaries”—mean nothing and are often deemed corrupt and morally inferior. Since 2000, AMLO has presented himself as a democratic innovator committed to social justice and has promoted the expansion of participation by excluded groups.

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Some backstory: Andrés Manuel López Obrador served as mayor of Mexico City from 2000 to 2005. He also ran for president in 2006, 2012, and 2018. In the 2012 presidential election, López Obrador presented his so-called “austerity plan” for the first time. This controlling instrument has driven his populist political agenda and aims to implement a national policy of republican austerity.

On April 12, 2012, during his second (unsuccessful) presidential campaign, AMLO described his early understanding of an austere government as follows:

Today, *we* are going to insist on the need to apply a republican austerity policy. We have always claimed that there cannot be a rich government with poor people. Under no circumstances—and even less so in a situation of economic stagnation, lack of job opportunities, and impoverishment—should public servants have access to the public budget to obtain high salaries, benefits, and perks, such as private medical care or retirement plans. (López Obrador, 2012, my translation, emphasis added)

Under this plan, all superfluous and unnecessary expenses of high-ranking public officials would be eliminated. AMLO promised to put an end to all the paraphernalia of power. And he advocated for an Aristotelian view of maintaining the Golden Mean (*una justa medianía*) to avoid succumbing to the extreme of excess or descending into deficiency. “Let’s save” and “for the good of all, the poor first,” became emblematic mottos of his everlasting political campaign.

During his 2018 presidential campaign, Andrés Manuel López Obrador appealed to the “transformation” of Mexico—the so-called *Cuarta Transformación* (Fourth Transformation), which would only be possible by implementing drastic policies immediately after taking office. These policies included cutting the salaries of high-level officials, combating poverty and inequality through the implementation of social programs for vulnerable groups, and eradicating corruption and impunity.

AMLO’s enticing rhetoric was embraced and supported by 53 percent of citizens uninterested and uninspired by Mexico’s politics, who finally elected him President of Mexico in a landslide victory on July 1, 2018. Andrés Manuel López Obrador won the presidency on the promise that he would transform Mexico by empowering the underprivileged in a country with deep social and economic inequality. Without a doubt, President López Obrador embodied an egalitarian hope, putting the forgotten at the center of his administration and promising to end oligarchic despotism at last.

The austerity plan nonetheless served as another channel for López Obrador to demonstrate, in plain sight, his contempt for democratic institutions, allegedly corrupt public officials, and elites who only furthered their self-interest. According to him, Mexico’s crisis originated not only in the failure of the neoliberal economic model applied over the past 36 years, but also because of the predominance of public and private corruption. The neoliberal model had turned the government into a committee at the service of a minority dedicated to making lucrative business at the expense of public service. Government corruption, he noted, has led to high levels of inequality, in which a minority became immensely rich and the vast majority of “the people” became impoverished, not due to fate or bad luck, but because of regime of corruption, injustice, and privilege.

Supreme Court justices, federal judges, and magistrates, among other public officials, are all included in AMLO’s catalogue of corrupt elites and self-interested public officials. In 2021, for example, López Obrador inexplicably drew a comparison between Brazil and Mexico to illustrate institutional abuse and governmental privilege and underlined how high-ranking officials in Mexico earned three times more than a high-ranking public official in Brazil.

What the Mexican case does present is the most contemporary example in Latin America of a rising populist government and its general implications regarding the independence of the judiciary. At two specific historical periods, Mexico’s judicial branch has been under similar assault and reduced to a subservient role by political regimes in the 20th and 21st centuries.

During the first period, from 1929 to 2000, Mexico experienced a system in which the government’s executive branch was powerful enough to subordinate the legislative and judicial powers. The Partido Revolucionario Institucional (PRI, Institutional Revolutionary Party) recognized the separation of powers as a leading tenet defining Mexico’s government structure in theory, yet this principle was far from respected in practice.

A second major assault against the judiciary in Mexico’s contemporary history began in 2018, when the process to strengthen the judicial branch as an institution was disrupted. Since then, the Mexican judiciary has been under attack, and judges are on the frontline. It has been broadly documented how judges at all levels have been threatened by political power grabs, the overwhelming majority of which come from legislators of the leftist political party, Morena, the Movimiento de Regeneración Nacional (National Regeneration Movement) (Lastiri, 2018; Vizcaíno, 2018; Aristegui Noticias, 2018).



Photo courtesy of the Presidencia de la República Mexicana.

One of the chambers of the Supreme Court in Mexico.

And the path of such judicial assault? Immediately after the 2018 presidential election, President López Obrador announced the implementation of his austerity plan and unveiled a hostile campaign against the legitimacy of Mexico's democratic institutions with special emphasis on the judicial branch. Under the alleged implementation of his austerity plan, the López Obrador administration has attempted to eliminate various tiers of the judiciary to advance his populist agenda. A series of executive and legislative action have placed obstacles for judges in the performance of their constitutional mandates. The López Obrador administration has used the state apparatus and media campaigns to tarnish the judiciary's institutional legitimacy and reputation *vis-à-vis* civil society. Members of AMLO's political party have employed dangerous generalizations and used isolated cases of corruption to discredit the entire judiciary.

Whereas the constitutional reform primarily served as a mechanism to set constraints against the Supreme Court justices during the PRI's authoritarian regime, Mexico's new form of governance has implemented more sophisticated forms of pressure, resulting in the judiciary's alignment with the presidential ideology and the adoption of the new populist government's canons. Over the past five years, the López Obrador administration has methodically constructed a narrative that sets the judiciary as part of the corrupt officials who have drained the country's public resources. This narrative has been followed by several blunt actions against Mexican judges (El Financiero, 2022).

As soon as he took office as President of Mexico, AMLO publicly sought to constrain the judicial branch and showed early signs of his willingness to levy political threats and potentially drastic actions against the judiciary that had been announced in past presidential campaigns (Beauregard, 2018). First, he advocated the replacement of the Supreme Court with a Constitutional Tribunal. This change would reduce the function of the former to a mere court of cassation (or appeals), which would remove the court's power of judicial review and dismantle Mexico's system of checks and balances. This constitutional change would set the stage for the president to remove the current bench and appoint judges sympathetic to his political ideology (Reporte Índigo, 2018). Second, he has recommended dismantling the Federal Judicial Council, an instance of the federal judicial power created under the 1994 judicial reform to oversee judicial administration and foster judges' independence (Boletín.org, 2018). Finally, he supports the establishment of a judicial career system with the purpose of politically leveraging the selection process of aspiring district judges or federal magistrates.

President López Obrador's transformative discourse, paired with his austerity policies, have instigated a blatant confrontation with members of the judiciary. The judicial branch became his favorite example of governmental corruption and abuse of public resources and aimed to place this institution under the control of the ruling majority. Such political interference has resulted in the erosion of the independence of justice in Mexico.

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The AMLO administration has also fostered a series of conditions that have facilitated the decline of the judicial branch. They include recent judicial appointments, political pressure to compromise the judicial guarantee against salary cuts, and use of state mechanisms to investigate and intimidate officials with alleged or fabricated corruption charges. Political pressure is being levied to dismantle institutions created as part of Mexico's longstanding democratic transition in the mid-1990s, including the creation of the Judicial Council, the Federal Electoral Tribunal, and the National Electoral Institute. At the same time, Morena has backed a series of legal and constitutional reforms targeting the judicial branch, among them the blatant violation of the Mexican Constitution to extend the mandate of the Chief Justice. All these conditions have enabled political elites to successfully constrain the judiciary's operation and counteract its institutional position.

Democracy and the rule of law depends on fair and independent courts to protect citizens against abuse of power, provide checks and balances, and administer justice without regard to outside pressures. The existence of a judicial branch that is separate from the other branches of government is a *sine qua non* condition in democratic countries. According to the UN Basic Principles on the Independence of the Judiciary, "the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason" (Office of the High Commissioner of Human Rights, 1985).

In January 2023, the Supreme Court justices elected the first female Chief Justice since 1824. Chief Justice Norma Piña Hernández has called upon political elites to respect the independence of the judiciary. In her first public engagement with AMLO, she noted that "judicial independence is not a privilege of judges; it is the principle that guarantees an adequate administration of justice to make effective the freedoms and equality of Mexicans" (Ferri, 2023).

However, the systematic political attacks discussed above have not ceased, indeed, they have intensified. Political threats against members of the judiciary have triggered an unprecedented risk to their personal integrity. In recent days, AMLO's political militants have

blocked the main entrance of the Supreme Court building and are calling for justices to resign in response to the latest judicial opinion that invalidated AMLO's so-called Plan B, which aimed to dismantle another critical democratic institution responsible for overseeing Mexico's electoral processes: the National Electoral Institute.

Overall, the Mexican case illustrates how the process of institutional strengthening and transformation of the judiciary has been interrupted since 2018 through the gradual judicial capitulation of Mexican judges to political pressure. Mexico's ongoing politics offer a unique account of the political process and enabling conditions under which a new form of political interference has taken place with regard to the Mexican judiciary and provide living examples of the challenges populism poses to constitutional democracy and the rule of law.

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References for this article are online at clas.berkeley.edu.

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