

THE SELECTION OF MEXICAN FEDERAL JUDGES

Dr. Zack V. Chayet

I will address briefly certain idiosyncracies that will give you a background, a reference, to why and how justices of the Supreme Court of Justice in Mexico as in the United States tend to be influenced by the political system of the two countries. Suffice to say that it is with distinct pride that this law school is hosting this international judges conference. I am certain that the participation of the Mexican and American federal judiciary can be of constructive impact in order to establish a dialogue that creates a level of understanding and trust. So, let me identify the key issues related to the process of selection of Mexican and U.S. federal judges. As a professor of international and comparative law, I will compare the processes addressing the areas of importance and concern in these two systems. As we all know the Civil Law System covers the Mexican composition of the judiciary. And as such, the importance of the judiciary is somehow placed in a paternalistic situation. Mexico and the writ of Amparo is the champion of state abuse protection. On the other hand, the United States is linked to the common law world which gives to the judiciary a different context than in Mexico. In the United States the judiciary with its independent position determines the socio-political mutations of the system. It guides and establishes the modernization of the law of the land. Even though we are different in the basic systems of judicial composition, we are certainly united by the mere fact that both countries utilize their federal court system for the purpose of affirming pure constitutionalism. Both countries being so similar from a pure constitutional point of view, struggle to protect constitutional rights and in both countries the respective supreme court and the federal courts are in a struggle as front runners of this theory. In Mexico, for instance, the federal power is the custodian of the constitution by way of the writ of Amparo. However, the Amparo in certain ways, as I see it, must not be used as a screen to violate the law. Now in the U.S., by constitutional mandate, the judiciary interprets and applies the law. However, American law has two distinctive ingredients. One a similar variety of federalism. The other, a common law tradition. With these two components the federal judiciary is

charged with interpreting the most democratic written national constitution in use today. In addition, the laws in the United States are derived from distinct independent decisions so called American common law. This becomes the foundation of the legal system itself. Therefore American law is *essentially* judge made. Even though many aspects are controlled by legislation, the courts continue to exercise power in their role as interpreters and creators. Now when I am talking about idiosyncrasy of the court system, I am addressing the fact that there is a system by which from a political point of view, Mexico has appointed its justices of the supreme court and the federal judiciary and in the United States also there is a political system by which the justices of the supreme court and the federal judiciary are appointed. The similarities are that in both cases, they are appointed. They are commissioned. Like in most cases in the United States, judges can be commissioned, appointed, they can be elected, some of them for an original tenure of certain amount of years, some of them for a permanency of life. In Mexico, as well as in the United States, it is the same procedure mostly when it comes to the appointment itself. It is a presidentially accepted appointment. It is the idea of the President being the central figure. The president of Mexico appoints the federal judiciary. And by that I mean whether directly or by recommendation, suggestion, or by a background check given to the president by the executive power of the candidates that may be appointed. And by background, I mean by political parties in the United States as well as in Mexico which are in power. I am of the opinion that in Mexico, as in the United States, the judiciary at the federal level establishes guidelines for stability, prosperity, exercising a responsible political role independent in essence. In the United States the supreme court has been created to answer the questions of conservative or liberal philosophies in accordance of the political composition of the courts. Although Congress often creates decisional law out of a political endeavour by subsequent legislation, it certainly gives the court the independence required. So courts do keep their independence. But there is no doubt that there is a political endeavour in accordance with the philosophy that prevails at that particular time. In Mexico the continuity of one political platform in the federal executive branch will dominate at all times the position of the supreme court of the land. These statements are derived from the way that the selection and appointment of the federal judges are carried out in both countries. Of course in the United States by

constitution article 3 section 1 "the judicial power of the United States shall be vested in one supreme court and in such inferior courts as Congress may from time to time ordain and establish." Congress initially utilized this directive to create a federal court structure by enacting the Judiciary Act of Sept. 24, 1789, and at present this system is composed by district courts in the original federal jurisdictions and circuit courts of appeal, with initial federal appellate jurisdiction and the United States Supreme Court with final appellate jurisdiction. Now all of these areas of political involvement in Mexico as well as in the United States are well identified in accordance with the making of the Supreme Court. Since the creation of the Supreme Court of the United States they went from ten justices to six justices and finally in the year of 1869 they finally settled at nine justices. Presidents of the United States have appointed justices that conform to the needs of the court; from some presidents that have had the opportunity to appoint one justice since 1823 up to the opportunity to appoint, like President Roosevelt, appointing from the area of 1937 to 1943 nine justices. The conformation of the court had to do with the political life of the country. Those days to appoint a justice and to have a court that could follow a liberal philosophy was not precisely one that prevailed. That idea prevailed during President Franklin D. Roosevelt and the court overturned quite a few of the decisions granted to be conservative. I believe that the position of the United States as far as political influence is well known and it is in accordance with the political party that is in power, and it is also a situation whereby the justices of the Supreme Court are appointees for life, and they can stay in that position if there is no impeachment that will remove them from their position. I believe that the confirmation of the supreme court and the federal judiciary in the United States somehow resembles the Mexican confirmation by virtue of also the political life and the political basis of how the federal Mexican judiciary is appointed. However, the only difference is there are no political parties to worry about at this point since what we see in the appointment of justices of the supreme court in Mexico is based only as a product of the political party that is in power. Since presidents appointing supreme court justices have been throughout the years from the same philosophical training. Supreme Court Justices in Mexico are appointed, and as long as "they don't misbehave" and they fear impeachment they may stay in their position for as long as there is no reason to remove them from the position.

