

The rising tendency to deform constitutional provisions and their interpretation to clampdown on independent institutions and powers for the establishment of autocratic constitutionalism.

The 1st of June 2025, in Mexico, the first popular election for every single judge in the country will be held ; From the lower courts to the Supreme Court all judges will be elected by vote.

This process not only ignores and goes against the urgent recommendation from Special Rapporteur on the independence of judges and lawyers of the United Nations ¹ to refrain from a direct election of judges and from the suppression of the Judiciary Council warning the Mexican state for the undeniable danger this reform poses to the judicial power and its independence.

It also clearly goes against the constitution itself, which specifically states in Article 49 « The Supreme Power of the Federation is divided, for its exercise, into legislative, executive, and judicial. » ²

Mexico, with a presidential form of government, had its last counterweight against the executive branch, weighting on the judiciary, since at 2024 election, the legislative power became a mirror for the executive when the president's party won a qualified majority on the election.

This majority permitted the constitutional reforms that oppress the judiciary system today. First against the one body who could control and stop the abuse of the constitution, the supreme court of justice of the nation, which magistrates were threaten to be fired with no economical retribution if they didn't accept to renounce from their charges only to apply again as candidates in the election.

The clampdown continued by bullet proofing the reforms from the judiciary rulings, by passing a law that forbids and nullifies the courts decisions on the constitutional reforms going against what was decided by the legislative, arguing that the legislative power is sovereign and represents the will of the people, further undermining the legitimacy of the courts.

The attack was finalized by the extremely controversial, irregular and expedited passing of an incomplete judicial reform, the reform was so immature and poorly created that it did not specify the procedure which would be adopted to ensure the feasibility and transparency of the reform, only referring to future provisions that would treat this subjects.

¹ Satterthwaite, M. (2024). *Información recibida sobre el paquete de iniciativas de reforma presentadas el 5 de febrero de 2024 por el Presidente Andrés Manuel López Obrador ante la Cámara de Diputados, las cuales podrían socavar la independencia de la judicatura mexicana*. United Nations. GENEVA: Special Rapporteur on the independence of judges and lawyers. Retrieved from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=29251>

² CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS. (s.d.). Récupéré sur <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>

The constitutional reform of the judiciary system, stated that all judges in all jurisdictions nationwide would be separated from their charges and a national election of judges would be held to assign the new judges in charge, even those from the supreme court, suppressing any hope of impartial and apolitical judgments in any jurisdiction in the country.

The defeat of the judiciary meant all of the supposedly separated powers had become a homogenous orchestra directed by Morena (Movimiento Regeneración Nacional) the political party of the president.

Even with the full control of the powers of the state, the clampdown continued onto independent institutions.

The national electoral institute (INE) was under threat of a reform that didn't succeed because of the nationwide opposition it encountered, nonetheless, Andres Manuel Lopez Obrador Mexico's president in 2024 and Morena continued the attack the INE by cutting its budget and assigning supporters of the government onto decision making charges in the institution. One notable example that showed its impact recently was the appointment of magistrates and of the president of the Tribunal Electoral, Mexico's highest jurisdiction in electoral matters previously internationally renowned for its example of institutional independence and transparency for elections.

The clampdown on INE allowed the judicial reform to follow its path, even while it was not economically viable and while the correct unfolding of the election couldn't be assured given the short period of less than 10 months between the (incomplete) reform and the election. The incoherence and the political bias from the newly composed Electoral Court is highlighted by the use of the economic viability argument, that in one hand wasn't sufficient for the cancelation or even postponement of the election, but in the other it was used by the Court to justify the violation of the basic right to participate in an election for the millions of Mexicans outside the national territory or in custody (whom are common innocent citizens until proven guilty).

Finally, a massive reform of numerous independent or semi-independent institutions of the government passed on November 2024, this reform suppressed their independence by placing them under the control of the executive. The core independent institution for transparency who worked as a check on every power was a victim of this attack; the Instituto Nacional de Transparencia y Acceso a la Información was transformed from an independent body into a governmentally ran body with no independence in charge of supervising its self.

Another institutional reform was recently attempted on the Instituto Nacional de Telecomunicaciones, what some analyst considers to be the fourth power, the media. Even though as a result of the massive mobilization and rejection, this reform wasn't passed, there is a clear established pattern: autocracies, not only in Mexico, tend to clampdown on independent bodies, independent powers of the state or independent institutions supervising the government; Besides, this tendency reflects that the constitutions of states are is being reformed and interpreted to suppress their possibility to work as means of checks and balances on power.

In fact, 2024 was specifically a year where an abnormal number of elections took place in the world and Mexico was not the only country to suffer from a clampdown. There is in fact a global tendency which exponentially grew last year to establish autocratic governments.

It is equally important to note that autocracies are not taking power by force, which could have been a more common method of handling things in the past, the modern autocracy uses the law to justify its illiberal ruling, more precisely it deforms the uppermost hierarchical norm, the constitution, by reforming provisions or misinterpreting its word to clamp down on to any checks and balances to their power.

This tendency is not only theoretical, it is a real threat to justice systems worldwide, to the protection of human rights and literally, to human life.

After realizing the extent of a probably irreversible clampdown under which many states are in right now and highlighting the tools that others have successfully used to counter the clampdowns, the following question will be treated.

How can the clampdown of autocracies on independent powers and institutions via the deformation of constitutions be prevented and countered?

A rising tendency is an event which's recurrence has increased in a determined period of time. The tendency of autocratic governments clamping down on independent bodies is a global tendency affecting countries at different levels as, yet not limited to: Austria, Hungary, Poland, Mexico, United States.

It is clear that this tendency is affecting numerous states around the world, therefore a comparative analysis becomes a relevant and necessary tool of prevention and countering against the clampdowns of autocratic regimes.

It is particularly important to analyze the constitutional frame in which a clampdown has succeeded, in a quest to find the vulnerabilities that can lead to said clampdown (I.) while simultaneously analyzing the constitutional checks and balances which have permitted to counter or prevent these clampdowns (II.)

I. Vulnerabilities leading to autocratic constitutionalism.

An early illustration of an autocratic government clamping down on institutions acting as checks and balances until acquiring total control is the case of Venezuela in 1998 election when Hugo Chavez won by 56% as president, just a year after in 1999 a full substitution of the constitution was promulgated by Chavez and the state is since an autocracy directed by the president.

What can be learnt from Venezuela's case is the importance on the procedural protection of the constitution, legislative was the only power recognized by the constitution to amend it, but Chavez arguing that he represented the will of the people, people which where sovereign and could decide to organize a constituent assembly to create a new constitution.

The lack of clear constitutional provisions that could work as basis for nullifying said illiberal acts of the president combined with a late and insufficient response by the constitutional court, allowed the autocratic regime to cement one of the most longstanding autocratic regimes in modern history.

Hungary is a more recent case of the clampdown onto independent powers with a specificity that makes it particularly interesting to study its case.

Hungary's clampdown began in 2010 after Viktor Orban and its Fidesz-Union party won the presidential election, shortly after which it attacked one of the main counterweights to the abuse of power, the constitutional court, having control over the constitutional court, a new constitution was written under which checks and balances were suppressed to favor the total control of the state power by the president.

Hungary's case is particular since the country became a member of the European Union on 2004; The European Union subjects the attachment to fundamental rights, democracy and rule of law not only as a condition for its candidates but also as commonly agreed principles on which member states agree and should follow, economic sanctions and exclusion from participating in European Union's activities and votes are the main sanctions and although this have been criticized as insufficient, it is clear that the constant observation and reject from other member states intrinsically attached to its membership to the European Union has been an factor of deterrence and defense from a more extreme case of Autocracy.

Hungary's case was analyzed by Konrad Lachmayer vis-à-vis of Austria's³ case another member state, he attributes the resilience of Austria's constitutional system against clampdowns to its constitutional structure and framework which explicitly protect and defend independent power and institutions which themselves actively defend the rule of law.

Mexico's vulnerability has since the beginning been clear, a common factor of postcolonial countries in Latin America: a super-presidentialism, giving too much power of action with few counterweights to the president, coupled with a rise in populism explained by the historical and constant abuse of political actors searching for personal benefit, has created a majority that the party in place has used to justify any and all kinds of actions arguing that anyone who does not support them are not the "people" and make the fact part of the corruption problem that has long affected the country.

Mexico's case should be an example of the necessity of a common understanding and intervention in international law for the prevention against autocratic regimes, Mexico's case was brought up to numerous international organizations which confirmed the violation of the rule of law and democratic principles by the constitutional reforms of 2024 and 2025 but the lack of accountability measures combined with a particularly violent repression and sentiment

³ Lachmayer, Konrad: *Austria's Populist Turn: Constitutional Conventions, Federalism and Resilience*, *VerfBlog*, 2025/1/16, <https://verfassungsblog.de/austrias-populist-turn/>, DOI: 10.59704/aebea5800f5e231e9.

of insecurity for people who raise their voice against this violations, allowed judicial power to fall and with it felt the democracy and rule of law that remained in Mexico.

The neighbor, United States of America, has increasingly been a victim of clampdowns on independent institutions and powers, with unlawful suppression of institutions and attacks on the judiciary power, even though it is at high risk of falling on to a full autocracy it's resilience until the moment can in part be attributed to the difficulty on the process of constitutional amending and on the opposition of economic powers to some of the attacks to the rule of law affecting their interest.

It seems that the core of the defense of the constitution in the united states case is, like in most cases, one of the first powers attacked: the judiciary power. This power often represented in constitutional matters by a constitutional court, tends to be one if not the first objective of autocratic clampdowns on the rule of law; This is why the courts should be protected from the attack of the other powers and judges should be resourced with constitutional provisions explicitly defending the rule of law and other independent institutions who assure it.

II. Checks and balances preventing and countering autocratic clampdowns.

Academics have compared the clampdown on the judiciary system in the United States to the one in Germany before their law system felt under complete control of the Third Reich, whilst some commentators suggest that protest from the judiciary are an essential tool, to counter the clampdowns on the judiciary, not all states have the possibility to express freely.⁴

Non the less the control of the law system legalizing some of the worst atrocities of human kind left an unforgettable footprint in the German constitutional system, which should now more than ever be seen as a reference.

The doctrine of *Unconstitutional Constitutional Amendments*, theorizes a core of constitutions which can not be reformed by any means, not even by the legislative power on a qualified majority; this core represents the functional and national specificities and inherent values of a state, and protects them from a clampdown.

Germanys article 79 paragraph 3 of the constitution contains the eternity clause prohibiting the constitutional amendment of certain fundamental principles of Germany, following this example, the Czech republic Article 9 paragraph 2 of the constitution prohibits any changes against the essential requirements for democracy and rule of law, this clauses have been used already to protect the rule of law as in decision Pl. ÚS 27/09 (2009) from the Czech

⁴ Graver, Hans Petter: Judges Under Stress and the Duty to Resist: What US Judges Can Learn From the German Experience, VerfBlog, 2025/3/14, <https://verfassungsblog.de/judges-resistance-executive-power/>, DOI: 10.59704/e8f8b41498e76dc2

Constitutional Court where the court annulled a presidential act to shorten the term of office of the chamber of deputies therefore jeopardizing the rule of law.⁵

Even if the doctrine has flaws, like not assessing the possibility of a complete replacement of the constitution, this tool is undeniably useful as a defense mechanism that should be implemented into constitutions.

Commentators criticize the lack of solution for a complete substitution of the constitution, but pragmatically this doctrine works as a prevention and a defense mechanism, giving legal means and basis to deter a substitution from taking place.

Further most, replacing a constitution to establish an autocratic regime, will inevitably end with a breakpoint where humans tolerance to subjugation ends and where violence will again become the catalyzer for the establishment of a new constitution. Reminding us the *raison d'être* of constitutions and law a mean to avoid the use of violence in the human interaction and daily life.

Considering the advance stage of autocracies in some states and being realistic on the possibilities of their recovering, it can become useful to think on the future, on how states can create defense mechanisms while rebuilding themselves.

Mexico's example can only come again to mind, the Partido Revolucionario Institucional PRI governed as a sole political party for more than 70 years in Mexico with an inexistent opposition due to their total control of institutions, nowadays Morena has become the new PRI consolidating with this election a clamp down on any institution or power who could have limited their power; The clampdown seems too advance to recover from it, nonetheless history has shown how oppression and humans tolerance to it can only last temporarily, for this reason, Mexico and every state being attacked should not panic and only concentrate on the disastrous moments that democracies are living today, they should prepare for the day the clampdown ends, to build a better tomorrow.

⁵ Constitutional Act on Shortening the Term of Office of the Chamber of Deputies, Pl. ÚS 27/09 (Constitutional Court of the Czech Republic 09 10, 2009). Retrieved from <https://www.usoud.cz/en/decisions/2009-09-10-pl-us-27-09-constitutional-act-on-shortening-the-term-of-office-of-the-chamber-of-deputies#:~:text=case%20law%2C%20beginning%20with%20the%20key%20judgment%20file%20no.%20Pl.%20%C3%9AS%2019%2F93>