

GROWTH AND CRISIS OF "PRESIDENTIAL GOVERNMENT" IN THE UNITED STATES AND MEXICO: A POLITICO-LEGAL COMPARISON

Este trabajo comparativo está dedicado en homenaje al distinguido maestro Héctor Fix-Zamudio, quien nos ha dado tanta iluminación sobre el derecho constitucional-procesal comparativo, y, a mi, su apoyo inestimable durante nuestra amistad de veinte años.

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SUMMARY: I. *Introduction and Overview.* II. *Constitutional Origins of the Modern/Plebiscitary Presidency in the United States and Mexico.* III. *The Growth of the Modern Presidency in the United States and Mexico.* IV. *The Powers "Roles" of the Mexican and United States Presidents Compared.* V. *Politico-Legal Limits on Presidential Power in Mexico and the United States.* VI. *Conclusions: Reforms Toward Limiting and Reinforcing Presidential Power in the United States Based in Part on the Mexican Experience.*

I. INTRODUCTION AND OVERVIEW

The President of the United States has dominated policy-making in the National Government since the Franklin Roosevelt Administration of the New Deal and World War II. The extent of such governmental centralization in recent years is unparalleled in the history of the Republic and would astonish even the most ardent advocates of executive leadership in the Constitutional Convention of 1787. In some policy areas, such as foreign relations and national defense, presidential powers rival or even surpass those of the Mexican President, the latter an internationally-regarded prototype of a stable and strong executive

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system.¹ The presidencies of both countries assume the functional roles of Chief Executive, Chief Legislator, Commander-in-Chief of the armed forces (thus formulating military policy and commitment of combat forces), Chief Foreign Policy-Maker, Economic Manager, Chief of State, Chief of his political party, and Protector of Internal Peace (roles based on the classic typologies of Clinton Rossiter,² regarding the United States presidency, and of Jorge Carpizo,³ on Mexico).

Scholars on both sides of the Border assert that the immense expansion of power for the presidencies of their respective countries has produced an alarming imbalance in their constitutional mechanisms for decision-making. In the United States, Professor Schlesinger concluded (after the Vietnam War on the Watergate crisis) that we have an "Imperial Presidency", especially in forming military and foreign policies.⁴ Louis Koenig describes an excessive reverence for the person of the President as the "Sun King Complex".⁵ Thomas Cronin sees a "Cult of the Presidency", in which the President is perceived as "benevolent, omnipotent, and omniscient".⁶ For me, the most persuasive explanation is that of Theodore Lowi: that we have a "personal/plebiscitary" presidency; i.e., a President who is the focus and the personification of the Government, but without the institutional, legal, and cultural capacity to govern effectively alone. Lowi holds that the presidency operates with extensive delegation of Congressional authority (with some delimiting laws as exceptions), affirmations by the Supreme Court (with a few delimiting decisions as exceptions), and the adulation or fixation of public opinion. The president has no ongoing institutional resources such as a strong political party system to fulfill the high hopes of his many "publics" or mass constituencies. Often the result is the practice of deception or manipulation of information to cover the lack of compliance, as well as frustration for the President himself and the ultimate weakening of the institution of the presidency.⁷

¹ Lambert, Jacques, *América Latina*, Barcelona, Ed. Ariel, 1970, pp. 552 and 553.

² Rossiter, Clinton, *The American Presidency*, 2d ed., New York, Harcourt, Brace, 1960.

³ Carpizo, Jorge, *El presidencialismo mexicano*, 3rd. ed., México, Siglo Veintiuno Editores, 1983.

⁴ Schlesinger, Arthur M. Jr., *The Imperial Presidency*, Boston, Houghton Mifflin, 1973.

⁵ Koenig, Louis W., *The Chief Executive*, 4th ed., Harcourt, Brace, Jovanovich, 1981, p. 11.

⁶ Cronin, Thomas, E., *The State of the Presidency*, 2d. ed., New York, University Press, 1980, pp. 76 and 90.

⁷ Lowi, Theodore J., *The Personal President: Power Invested, Promise Unfulfilled*, Cornell University Press, 1985, espec. Chapter 6.

The central thesis of this study is that the sheer scope of presidential powers in the United States also contains the sources of profound weakness: the lack of political accountability to Congress and his own party leadership creates a reliance on public opinion for his governing support. The recent crisis for President Reagan involving secret and possibly illegal arms shipments to Iran and "laundered" military aid to the *contras* in Nicaragua merely illustrates the pattern among recent Presidents; e.g., Eisenhower and the U-2 "spy" plan over the Soviet Union which scuttled the pending summit conference; Kennedy and the Bay of Pigs fiasco; Johnson's continuing deception and secrecy on the Vietnam War and the Dominican Republic intervention; Nixon and the Watergate affair. By-passing the institutional arrangements such as Congress and the party system results in populism, "Power-mania", and the ultimate instability of the presidency itself.

What of the Mexican presidency, then? Does it offer lessons for correcting such a syndrome in the United States, both in demonstrating the negative as well as positive aspects of the ways the Mexican presidency has exercised its power? In both the selection process and administration of the office, the Mexican presidency has been similarly and rightly criticised as too bureaucratic, technocratic, and central to the maintaining of an authoritarian political system which has only the trappings of democracy.^{7 bis} Thorough and pointed indictments have also been leveled on the regime's excessive and often corrupt response to organized interested groups representing the foreign investor, corporate industry, large agricultural landholders, and the middle class bourgeoisie in general.⁸ These criticisms notwithstanding, this study

^{7 bis} Authors representing this thesis, in varying degrees, are: Carpizo, Jorge, *op. cit.*, *supra* note 3; Cosío-Villegas, D., *El estilo personal de gobernar*, México, Joaquín Mortiz, 1975; and *La sucesión presidencial*, México, Joaquín Mortiz, 1975; Smith, Peter, *Labyrinths of Power: Political Recruitment in Twentieth Century Mexico*, Princeton, Princeton University Press, 1979, known for fomenting the "two-elite" thesis —that the capitalist bourgeoisie in Alignment with foreign investors can strongly influence but do not control policy processes in the hands of a separate governing, technocratic elite—; Hellman, J. A., *Mexico in Crisis*, 2d. ed., Holmes & Meier, 1983, who closely follows the Smith hypothesis but emphasizes the stronger degree of bourgeois influence and gains from PRI-presidential authoritarianism; and Padgett, Vincent, *The Mexican Political System*, 2d., Houghton-Mifflin, 1976. Less critical of "presidential government" in Mexico are Scott, Robert, *Mexican Government in Transition*, 2d. ed., Urbana, Univ. of Illinois Press, 1964, and Needler, Martin, *Mexican Politics: Containment of Conflict*, New York, Praeger, 1982.

⁸ See especially Riding, Alan, *Distant Neighbors: A Portrait of the Mexicans*, New York, Knopf, 1985; Mora, J. M. de, "...por la gracia del señor presidente",

will show that both the structure and limits of Mexican presidential power, strongly rooted in the dominant party system and its internal "sector" leadership, produce more stability and ultimate accountability than the increasingly chimeral power base of its Anglo-American counterpart.

II. CONSTITUTIONAL ORIGINS OF THE MODERN/PLEBISCITARY PRESIDENCY IN THE UNITED STATES AND MEXICO

1. Article II of the United States Constitution of 1787 creates the office of President and grants to him "the executive power" as well as specific authority to 1) act as commander-in-chief of the armed forces; 2) issue pardons and reprieves (*suspensiones temporales*) of sentences or punishments administered by the federal courts; 3) make treaties as ratified by a two-thirds vote of the Senate; 4) nominate ambassadors, other public ministers and consuls, judges of the federal courts, and other officers of the Federal Government; and 5) deliver the annual State of the Union message, recommend and veto (per Article I/7), convene extraordinary sessions of the Congress, receive foreign diplomats, and "faithfully execute the laws".

2. Do the foregoing powers signify great powers as implied, residual, or inherent in the first phrase, "the executive power" of which the specified subsequent powers are merely examples?; or, on the other hand, do they encompass the *total* range of presidential powers as similar to the enumerated powers of Congress in Article I/8. Put simply, does the broad phrase "executive power" parallel the "implied powers" of Congress as contained in the "necessary and proper clause" of

México: la gran mentira, México, Ed. Asociados, 1977; Aguilar Mora, Manuel, *El bonapartismo mexicano*, tomo I: "Ascenso y decadencia", México, Juan Pablos., Ed., 1982, in a class-oriented Marxist analysis, speaks of the internal contradictions between "el aburguesamiento del bonapartismo estructural" (p. 180), resulting from conflict between the technocratic-bourgeois elites and "the corrupt and venal practices" of the professional politicians. In their recent ascendancy, "the former now direct investment policy, agrarian reform, foreign trade, higher education and research, regional development planning, foreign policy, and efforts to reform corruption in the bureaucracy". (*Loc. cit.*). See also González Casanova, Pablo, *La democracia en México*, 1965, Eng. trans. 1972, and *El Estado y los partidos políticos en México*, México, ed. Era, S.A., 1981; Kenneth F., Johnson, *Mexican Democracy: A Critical View*, 3rd. ed., New York, Praeger, 1984; and, in a more moderate critique of the regime's favoritism toward capitalism while conceding some modest redistribution programs (which he terms "populist corporatism"); Reyna, José Luis, "Redefining the Authoritarian Regime", in Reyna J. L. and R. S. Weinert (eds.), *Authoritarianism in Mexico*, 155, Phila., Institute for the Study of Human Issues, 1977.

Article I/8/18 (for such a broad interpretation of congressional implied powers, see *McCulloch v. Maryland*, 4 Wheat. 316, 1819).

A) Part of the answer can be found in the disagreement between Alexander Hamilton and James Madison, the two principal authors of the *Federalist Papers* and among the most influential members of the 1787 Convention.

a) For Madison, the powers of the President were limited to those enumerated in Articles II and I/7; he held that if greater powers could ultimately be justified as inherently or concurrently executive, "no citizen could any longer guess at the character of the government under which he lives; the most penetrating jurist would be unable to scan the extent of constructive prerogative".^{8 bis}

b) On the other side, Hamilton believed that "the general doctrine of our Constitution, then, is that the executive power of the nation is vested in the President; subject only to the exceptions and qualifications which are expressed in that instrument".⁹ His assumption was that the objective of leadership is to assure "liberty against the enterprises and assaults of the ambition of faction, and of anarchy" (*Federalist* No. 70). One of the methods for fulfilling this purpose was to be a national system of election by the electors of the people of each state; i.e., by way of the popular vote as diffused through the Electoral College. The second is to require "energy and wisdom" in the effective administration of the government; i.e., combining *personal and institutional* elements in the exercise of presidential power.¹⁰

B) The "great debate" between Hamilton and Madison¹¹ finds expression in two conflicting theories of executive power: that of "stewardship", best represented by President Theodore Roosevelt, and that of "strict construction" or "constitutionalist" as advanced by President Taft W.H., among others. According to President Roosevelt, "the President can do anything that the needs of the nation demand unless such action is forbidden by the Constitution or by the laws".¹² Taft¹³ belie-

^{8 bis} Madison, James, *Letters and Other Writings of James Madison*, Fendall, Phillips ed., Phila., Lippincott, 1865, p. 621.

⁹ Hamilton, Alexander and John C., *Works of Alexander Hamilton*, New York, C. S. Francis & Co., 1851, p. 76.

¹⁰ Per *Federalist* No. 70, see Eidelberg, Paul, *The Philosophy of the American Constitution*, New York, The Free Press, 1968, pp. 191 and 192.

¹¹ Hamilton, Alexander; James Madison, and Jay, John, *The Federalist Papers*, Rossiter, Clinton ed.

ved, to the contrary, that the President must be able to justify each decision as it directly emanates from constitutional grants of authority or statutory grants by Congress.¹⁴

3. Comparative Notes on the Mexican Presidency. The strength of the Mexican President cannot be legitimized by any such interpretive or customary expansion of powers as represented by the "stewardship" theory, according to presidential scholar Jorge Carpizo. The President's authority is grounded to the express "constituted" powers and limits of the Fundamental Charter of 1917 (mainly Articles 80-93), and not the "constituent powers" of his electoral or political base, per Hamilton, or as he, the President, perceives the need to expand them, per Theodore Roosevelt. The constitutional limits on the President comprise a fundamental legal right for all Mexican citizens.¹⁵ Within these limits, however, the President has an enormous range of powers as chief of State, government, and the dominant Party of Revolutionary Institutions (PRI). This theme will be developed in later sections of this study.

III. THE GROWTH OF THE MODERN PRESIDENCY IN THE UNITED STATES AND MEXICO

1. The views of Hamilton and Theodore Roosevelt have prevailed in the practices of United States presidents since George Washington (1789-96), most especially since the administration of Franklin Roosevelt (1933-45). Notwithstanding presidential abuses during the crises of Watergate and Vietnam, "few voices call for replacing the expansive stewardship presidency with a constitutional one".¹⁶

2. The historical causes of the expansion of presidential power are well known, and apply with variations to Mexico, Peru, Venezuela, Colombia, Argentina, Brazil and other strong executive systems in the democracies of the Americas. Such reasons include the pressures for social and economic modernization, the complexities of the technolo-

¹² Roosevelt, Theodore, *Autobiography*, New York, MacMillan, 1913, p. 389.

¹³ Taft, William Howard, *Our Chief Magistrate and His Powers*, New York, Columbia University Press, 1916.

¹⁴ Stephens, Otis H., and Gregory J. Rathjen, *The Supreme Court and the Allocation of Constitutional Power: Introductory Essays and Selected Cases*, San Francisco, W. H. Freeman & Co., 1980, p. 272.

¹⁵ Carpizo, Jorge, *op. cit.*, *supra* note 3.

¹⁶ Stephens, Otis H., and Gregory J. Rathjen, *op. cit.*, *supra* note 14.

gical age, international and domestic crises, decentralized power structure of Congress and the party system, the various imprints of individual presidents who set their own expansive precedents, and, in the case of the United States, the ambiguity of Article II of the Constitution. Legally, the centralization of presidential authority can be attributed to the delegation of powers by Congressional statute and supporting decisions of the Supreme Court.

3. In Mexico, there are similar causes, but with unique additional factors. According to Professor Carpizo (1982, 25-26), the latter include:

a) [The President] is the chief of the predominant party [the PRI] which is composed of the large labor, farmworker, and professional groups;

b) The weakness of the legislative branch, because the great majority of the legislators are members of the predominant party and know that to oppose the President is to risk their possibilities of succeeding and thus their political careers;

c) The Supreme Court is composed of political elements who will not oppose the President in cases wherein he has an interest;

d) The marked economic influence of the mechanisms controlled by the central bank, decentralized (independent) agencies, and the quasi state enterprises, as well as the broad management power of the President in all economic matters;

e) The institutionalization of the army, whose generals depend on him;

f) The President's strong influence on public opinion through the [the government's] controls and authority over the mass communications media;

g) The concentration of financial resources in the Federal Government, especially as controlled by the Executive;

h) The President's broad constitutional and extra-constitutional powers, such as his designation of his successor and state governors;

i) His determination of all aspects of international relations, against which there exists no brake by the Senate;

j) His direct governance of the most important region of the country, the Federal District, and

k) A psychological element: that public opinion generally accept the predominant role of the Executive without question.

For Andres Salcido,¹⁷ centralized presidential hegemony results primarily from *unipartidismo*, or the monopoly of the political subsystem by the PRI. Pyrammidical organization of the cabinet departments with their secretaries appointed and directly removable by the President, of the decentralized and parastate agencies (such as CONASUPO), and allegiance of state governors to the President, all ensure presidential control of the entire federal governing system.¹⁸ Martin Needler calls these partisan levers of administrative control *camarillas*, or personal networks of power and influence.¹⁹

4. The majority of United States presidents since Theodore Roosevelt (1901-09) have been active believers in the concept of "stewardship". Following the typology of Professor James Barber,²⁰ there are four types of presidential personalities (with examples of each):

	ACTIVE	PASSIVE
POSITIVE	T. Roosevelt	Taft
	F. D. Roosevelt	Harding
	Truman	Reagan (?) *
	Kennedy	
	Ford	
	Carter	
NEGATIVE	Wilson	Coolidge
	Hoover	Eisenhower
	Johnson	
	Nixon	

* Some scholars do not agree with this classification of Reagan, who see him as very "activist" on his goals of budgetary cuts, increased in military spending, and assistance for the *contra* rebels in Nicaragua. He also can be considered "positive" because he appears to enjoy his responsibility and work as "decision-maker" in the White House.

¹⁷ Salcido, Andrés, *La crisis estructural del sistema político mexicano*, enero de 1983, pp. 19-43.

¹⁸ *Idem*, pp. 38-43.

¹⁹ Needler, Martin C., *Mexican Politics: The Containment of Conflict*, New York, Praeger Publishers, 1982, pp. 89-91.

²⁰ Barber, James D., *The Presidential Character: Predicting Performance in the White House*, 3rd. ed., Englewood Cliffs N. J., Prentice-Hall, 1985.

Richard Neustadt²¹ insists "activist" presidents need to maximize their power to persuade others, especially in the Congress and the federal bureaucracy, in order to gain support for their programs. This means using the threat or rewards of presidential power to influence supportive behavior, rather than open confrontations and formal mandates.

5. An essential element in the Mexican President's ability to persuade is his and the PRI leadership's ability to coopt all manner of dissident group leaders, the success of which has been the hallmark of the party's 70-year hegemony over the political system. As Lorenzo Meyer²² has so well put it:

Institutionalization, continual renewal of the leadership, and the acceptance of new actors in the political arena have made it possible for cooptation to become one of the central elements of Mexico's present political system. Almost any person with a political vocation can be accepted by the regime and given a chance within the Party or the administration. . . . The Party is open to all classes and ideologies; only the extreme right and left are excluded, not necessarily by the Party but by themselves. The PRI has room for both Marxists and classical liberals who believe that strict observance of the doctrines of Adam Smith or Milton Friedman is the only way out of underdevelopment. The thousands of jobs available —at state and national levels— in government agencies every six years provide adequate rewards for those coopted.

Judith Hellman's²³ interesting little study of a graduating class of the Faculty of Political Science at the National University illustrates cooptation even further. This class of the early 1960's had a huge majority of Marxist or "left-wing" students openly and stridently anti-government. Two years after graduation, only one of its members had taken a job that was not with the PRI or the government.

Government controls of advertising revenue, newsprint and needed equipment (via import permits), licensing to broadcast, and patronage

²¹ Neustadt, Richard E., *Presidential Power: The Politics of Leadership from FDR to Johnson*, 2d. ed., New York, John Wiley & Sons, 1964.

²² Meyer, Lorenzo, "Historical Roots of the Authoritarian State in Mexico", Reyna, José Luis, and Weinert, Richard S., eds., *Authoritarianism in México*, Phila. Institute for the Study of Human Issues, 1977, p. 16.

²³ Hellman, Judith Adler, *México in Crisis*, 2d. ed., New York & London, Holmes & Meier Publishers, 1983, pp. 139 and 140.

greatly enhance the Mexican President's over-all media effectiveness as compared with his United States counterpart.²⁴

The President's "power to persuade", however, has not prevented and even disguises serious underrepresentation of the student left, non-PRI urban workers, and independent small farmers.²⁵ Such exclusion or neglect is a continuing danger signal for the future stability of both the presidential and one-party systems in Mexico. One "safety net" in comparison with the United States, of course, is Mexico's political tradition reflecting and reinforcing popular subordination to a single king or ruling group.²⁶ And a "safety valve" might prove to be the political reform law of December 31, 1977 (Federal Law on Political Organizations and Electoral processes). It liberalized procedures for political party recognition, increased minority party representation in the federal Chamber of Deputies (a minimum of 100 out of 400 members), expanded opposition party involvement in the federal and state electoral commissions, and allowed all parties access to mass communications media.²⁷ We shall explain this law's consequences for the President's electoral base in later sections of this study.

IV. THE POWERS/"ROLES" OF MEXICAN AND UNITED STATES PRESIDENTS COMPARED

1. The powers of the Mexican and United States Presidents will be compared briefly with regard to the following "roles" that each exercises (pursuant to the classic model of Clinton Rossiter, 1956): Chief Executive, Chief Foreign Policy-Maker (corollary to his role as Chief of State), Commander of National Defense, Protector of the Public (Internal) Peace, Chief Legislator, Manager of the National Economy, and Chief Party Leader. On the one hand, these power roles are interdependent and reciprocal; e.g., the President needs to mobilize his informational and technical resources in the federal bureaucracy (maximizing his role as Chief Executive) in order to influence foreign

²⁴ See Riding, Alan, *Distant Neighbors: A Portrait of the Mexicans*, New York, Knopf, 1985, pp. 82 and 83.

²⁵ See Hellman, Judith Adler, *op. cit.*, pp. 213-215, and Meyer, Lorenzo, *op. cit.*, p. 17.

²⁶ Paoli, Francisco José, *Estado y sociedad en México, 1917-1984*, México, Ediciones Océano, 1985, pp. 20-27.

²⁷ See Middlebrook, Kevin J., *Political Liberalization in an Authoritarian Regime: The Case of Mexico*, Center for U.S.-Mexican Studies, University of California, San Diego, Research Report Series No. 41, 1985.

relations, maintain a strong military response to overseas crisis points, or to persuade a Congressional committee to adopt his budget proposals. On the other hand, some of these roles can conflict with others; e.g., his role as Chief of Party may work against his role as Chief of State or as Economic Manager he may have to recommend budgetary recommendations which offend the military leadership.

The sum result of these multiple and diverse powers exercised by the activist or "stewardship" President is a presidency which is, in John Kennedy's phrase, "the vital center of action" and the central political force within the entire American system of government.²⁸ All this and more can be attributed to the Mexican Presidency. According to Jorge Carpizo, "in our country, without doubt, the President is the keystone of the governing system and has enormous predominance over all other political elements that make up that system".²⁹

2. The United States and Mexican congresses have delegated and their Supreme Courts have affirmed great powers to both nation's presidents. Both the legislative and judicial branches therefore constitute key sources for the immensity of those powers today Examples follow with respect to each power role.

A. The President as Chief Executive:

a) The United States President can dismiss the secretaries and directors of his cabinet and key departments of the Executive Branch; see *Myers v. U.S.* (272 U.S. 52, 1926), approving President Wilson's removal of his Postmaster without Senate approval and invalidating in the same decision a congressional statute denying the President such power. But this "presidential patronage" authority does not extend to members of the independent or decentralized agencies such as the Federal Trade Commission, as per *Humphrey's Executor v. U.S.* (295 U.S. 602, 1935; analyzed further under Section V, *infra*).

b) The President has the sole responsibility to nominate members of the same independent agencies and the Congress cannot share this function; in *Buckley v. Valeo* (424 U.S. 1, 1976), the Supreme Court struck down a 1972 law granting to Congress the authority to name four of the six members of the newly-created Federal Elections Commission.

c) By contrast, the President of Mexico has almost unlimited power

²⁸ See Cronin, Thomas E., *op. cit.*, *supra* note 6, p. 156.

²⁹ Carpizo, Jorge, *op. cit.*, *supra* note 3, pp. 23 and 24.

to appoint as well as to remove all high-ranking executive officials. Even where the Constitution (principally Article 89) mandates concurrence by the Senate or Chamber of Deputies for appointments, the President retains effective control through the practice of mass resignations at the beginning of each new President's six-year term (*sexenio*), the patronage monopoly of the President's party the PRI, and highly centralized budgetary controls administered by the President through his Secretary of Planning and Budget (*Secretaría de Programación y Presupuesto*). The latter gives to the President tools of centralization which far exceed the impressively similar function of the Office of Management and Budget in the Executive Office of the United States.³⁰ The only constitutional exceptions to the President's total discretion over appointments or removals are those 1) subject to Senate review, such as diplomatic ministers and agents, high officials of the finance ministry, consul generals, military officers from colonel to general, and the members of the national Supreme Court; and 2) subject to review by the Chamber of Deputies, namely judges of the federal appeals courts in the Federal District. According to Carpizo and others, the President may *freely remove* all above except for justices of the Supreme Court, officers of the armed forces, and top finance officials. Also in direct contrast to the United States, the Mexican President uses his constitutional and political powers to designate the state governors, mayors of principal municipal governments, all federal senators (no non-PRI Senate candidate has ever been elected since the Revolution), the majority of federal deputies, and, course, all the serious contenders for his own succession.³¹ Furthermore, Article 76, 5) of the 1917 Constitution effectively allows the President to remove distasteful, incompetent, or corrupt governors when the Senate declares their powers have "disappeared", usually at the initiative of the Secretary of Government. Infrequently used since the 1930's, the threat of removal is more often employed as a way to force the resignation of problem governors.³²

d) The President of the United States can withhold information or documents from the courts or Congress by invoking the doctrine of "executive privilege". However, this power is limited, according to the Supreme Court's decision in *U.S. v. Nixon* (418 U.S. 683, 1974). In

³⁰ *Idem*, Chapters VI, X/1-2, and XIII.

³¹ *Idem*, pp. 117-121.

³² See Needler, Martin C., *op. cit.*, *supra* note 19, p. 94, and Carpizo, Jorge, *op. cit.*, pp. 198 and 199.

the first use of the phrase Attorney General William Rogers supported President Eisenhower's refusal of a demand by Senator Joseph McCarthy to reveal information regarding "Communism" in the Armed Forces and in the Department of State. The Supreme Court in *U.S. v. Nixon* denied to President Nixon the right to reject a subpoena from the federal judge in the trial of the "Watergate" defendants to release the audio tapes recording White House conversations. But the Court still affirmed the constitutionality of the doctrine as inextricably intertwined in the separation of powers according to the Constitution and this includes the necessity of conserving private conversations between the President and his advisers.

e) There is little controversy in Mexico as to whether the President can legally or constitutionally withhold requested documents from the Congress or the courts. One authority held that such privilege may be necessary, but that it should be "only temporary, and while the matter is pending", after which the President should give account if asked in order to determine if he had exceeded his powers,³³ professor Carpizo states that the issue simply has not been tested, and that "any congress which knows only which the executive wants it to know, is not an independent organ".³⁴

f) The United States Congress has also yielded to the President an impressive array of powers to support his capacity to govern. For example:

1) The Employment Act of 1946, establishing a Council of Economic Advisers to assist the President in the planning and economic development of the country and charging him with the task of maintaining full national employment (see *infra*, for the role as Economic Manager);

2) The National Security Act of 1947, creating the National Security Council (NSC), with the President, Vice-President, and Secretaries of Defense and State as members, along with a recently expanded and controversial staff. Frequently attending are key resources such as the Chairman of the Joint Chiefs of Staff, the President's foreign policy adviser, the Central-Intelligence Agency chief, and even the head of the Federal Bureau of Investigation. The recent presidential crisis over arms sales to Iran and possibly illegal military aid to the Nicaraguan

³³ "Catecismo político de la Federación Mexicana", in *Derechos del pueblo mexicano*, México, Cámara de Diputados, 1967, cited in Carpizo, Jorge, *op. cit.*, p. 112.

³⁴ Carpizo, Jorge, *op. cit.*, p. 113.

contras resulted from an unsupervised and zealous group of NSC staff members (see "Conclusion", *infra*).

3) The Budget and Accounting Act of 1921, which created the Bureau of the Budget — in turn changed to the Office of Management and Budget (OMB) by President Nixon's Executive Order in 1974. The OMB increases the ability of the President to oversee and compel obedience of his policy objectives by all the agencies subject to the discretionary portions of the Executive Budget. The OMB can also exert great pressure to prevent department chiefs from appealing to and even appearing before Congress in order to change the President's priorities.

4) The Executive Office of the President established by Executive Order of President Franklin Roosevelt in 1939, which now includes the aforementioned, CEA and OMB, and the White House Staff. The latter contain most of the personal advisers and counselors of the President: those for foreign affairs, domestic issues, national security, congressional relations, and the Press Secretary. The dramatic increase in the White House Staff demonstrates the recent expansion of presidential responsibilities and influence over the national government (note especially increases in full-time staffers):³⁵

		<i>Full Time</i>	<i>Temporary Loan</i>	<i>Total</i>
F. Roosevelt	(1937)	45	112	157
Truman	(1947)	190	27	217
L. Johnson	(1967)	251	246	497
Nixon	(1973)	550	34	584
Reagan	(1984)	575	17	592

5) Since 1939, Congress approved a series of Executive Reorganization Acts permitting the President to restructure federal agencies and cabinet departments according to plans he must submit to that body. If the Congress does not expressly reject such plans within sixty days, however, they become effective immediately.

g) The Mexican President's central leadership role in the single-party political system reinforces and assures his centralized control of the entire federal bureaucracy as well as the federal judiciary and legis-

³⁵ Cronin, Thomas E., "The Swelling of the Presidency: Can Anyone Reverse the Tide", Woll, Peter ed., *American Government: Readings and Cases*, 9th. ed., Boston, Toronto, Little, Brown & Co., 1987.

lature; thus, "presidential centralism is a fundamental requisite for the functioning of the State apparatus".³⁶

Primary among the President's tools of executive and politico-legal power is the Secretariat of Government (*Gobernación*). It includes most functions of the United States Attorney General, but also supervises federal-state relations and organizes elections.³⁷ The government minister is the chief of the cabinet and as such is the most powerful person in the country next to the President of Mexico himself.³⁸ Since 1946, four of the last seven presidents were chosen from those holding that position.

The cabinet itself is an extra-constitutional institution over which the President exercises almost total control as to its membership, policy directives, and meeting as a body.³⁹ Nonetheless, the President must consider the interests and feelings of the "barons of the party" when making his top-level choices.⁴⁰ Composition of the cabinet varies greatly with each President. Only when it functions as a European-style Council of Ministers in cases involving the suspension of individual guarantees directed by the President to Congress does any law specify its membership (per Organic Law of Federal Public Administration, article 6): the secretaries of government and each regular department, chiefs of administrative departments, and the attorney general (*Procurador General*). But otherwise each President has narrowed or widened his use of the cabinet at his own discretion; for example, it can include the President's private secretary (Ortiz Rubio) or the attorney general of the Federal District (Calles). A grand cabinet (*gabinetote*) potentially may incorporate the decentralized agencies and state enterprises such as the government oil monopoly (PEMEX), social security institute (IMSS), and federal electric power company (CFE). Unlike the United States cabinet in recent years, composed disproportionately of corporate businessmen, lawyers first, then engineers dominate Mexico's top executive leaders.⁴¹

Perhaps the sharpest contrast with the President's control of his own branch in the United States is the Mexican chief executive's centralized leverage over the "independent agencies" of the Federal Government; *i.e.*, the decentralized agencies and state-controlled enterpri-

³⁶ Salcido, Andrés, *op. cit.*, *supra* note 17, p. 41.

³⁷ Needler, Martin C., *op. cit.*, *supra* note 19, pp. 91 and 92.

³⁸ Carpizo, Jorge, *op. cit.*, p. 74.

³⁹ *Idem*, p. 77, and Salcido, Andrés, *op. cit.*, p. 41.

⁴⁰ Needler, Martin C., *op. cit.*, p. 90.

⁴¹ Carpizo, Jorge, *op. cit.*, p. 77.

ses. The principal delegating statute is the 1970 Law for Control of Decentralized Agencies by the Federal Government, which unequivocally asserts that such agencies "remain subject to the control and supervision of the Federal Executive", except for cultural and educational institutions and agencies dealing with public credit and finance (Article 1). The latter, however, are dependent on certain cabinet secretaries who themselves, as we have seen are spokesmen for the President; *i.e.*, the Secretary of Finance and Public Credit, on credit policy, Secretary of Presidency (now Planning and Budget, see *infra*), on investments, an Secretary of National Patrimony, on inspections and accounting for general service agencies.⁴² The importance of Mexico's independent agencies for the national economy and social welfare overshadows even the line cabinet departments — again unlike the United States. In 1978, the expenditures of all these agencies totalled 478 billion pesos compared to 434 billion for the centralized cabinet agencies.⁴³

The strategically placed and influential Secretariat of Planning and Budget (*Secretaría de Programación y Presupuesto*), formerly the secretariat of the presidency, further centralizes the operation of the entire Federal Government in the hands of the President. The office functions as a general "think tank" and coordinator for the President as well as budget controller. It thus combines the counterpart positions of White House Chief of Staff and Director of the OMB in the Executive Office of the United States. It also houses the President's private secretary, director of general administration, news secretary, and other planning and research staff. The 1976 amendments to the Organic Law of Federal Public Administration greatly expanded the secretariat's responsibilities (now renamed). The planning and budget minister now can "control and supervise financially and administratively the operation of the decentralized agencies, institutions, corporations, and enterprises that manage, develop, and possess natural resources and wealth of the nation, or corporations and institutions in which the federal administration possesses . . . patrimonial interests not expressly entrusted or subordinated to other agencies" (per Article 32, XII). He also has sweeping oversight and coordinative powers in relation to all cabinet departments as well through his control over the income and spending in line with the federal budget.⁴⁴

⁴² *Idem*, pp. 152 and 153.

⁴³ *Idem*, p. 153.

⁴⁴ *Idem*, pp. 152 and 153.

B. The President as Chief of National Defense
(Commander-in-Chief)

a) A few important cases show that the Supreme Court can delimit presidential powers to protect national security (see, e.g., the Steel Seizure and Pentagon Papers decisions, Section V, *infra*). But "it would be foolish to expect the Court to place more than marginal constitutional restraints even on those national security powers wielded solely by the president, let alone those which the president and Congress exercise together".⁴⁵ Examples of major affirmations by the Court of the President's broad authority as "Commander-in-Chief (in the phrase of Article II) :

1) *The Prize Cases*, 2 Black 35 (1863), approving President Lincoln's blockade of Southern ports during the Civil War — before Congress expressly approved the action and declared a state of war;

2) *Ex parte Vallandigham*, 28 Fed. Case. 874 (1863), in which the Court declared its lack of jurisdiction to review a criminal sentence of a non-military person by a military tribunal during the Civil War;

3) *Mississippi v. Johnson*, 4 Wall. 475 (1867), denying judicial review to prohibit the President from establishing a military government in the South conquered during the Civil War;

4) *Korematsu v. U.S.* 323 U.S. 214 (1944), affirming presidential authority to detain thousands of Japanese Americans in "concentration camps" on the Pacific Coast during World War II;

5) *Massachusetts v. Laird*, 400 U.S. 886 (1970), which rejected the standing of Massachusetts to challenge the constitutionality of the "presidential war" in Vietnam and the military conscription system supporting that war; see also *Holtzman v. Schlesinger*, 414 U.S. 1304 (1973).

b) The Congress also has delegated by statute or implicitly permitted by inaction presidential authority to conduct wars or military activities in foreign lands. In partial response to the judicial abdication just described, Congress has tried to reverse the historical tendency to approve *de facto* presidential military interventions after the fact by way of budgetary appropriations, etc. The most significant of these delimitations is the passage of the War Powers Act in 1973 over the veto of President Nixon. It requires the President to consult with the

⁴⁵ Shapiro, Martin and Douglas Hobbes, *American Constitutional Law: Cases and Analysis*, Cambridge, Mass., Winthrop, 1978, p. 495.

Congress within 48 hours and receive its approval after a maximum of 90 days of overseas troop commitment. But as several commentators have concluded, the Act gives the President enormous discretion within that 90 days to inflict all kinds of combat damage — directly against the constitutional power of Congress to declare war per Article I, Section 8.⁴⁶ Indeed, the Act has never been fully implemented or tested through several armed interventions by Presidents Ford, Carter, and Reagan in various international “trouble spots” from the rescue of the merchant ship *Mayaguez* in Cambodian waters and of Iranian hostages to the more protracted military involvements in Central America, Grenada, and Lebanon.⁴⁷ Finally, the President can use his great powers as Commander-in-Chief to assert and maintain the principle of civilian supremacy over the military, sometimes at great political risk. Such was the case when President Truman dismissed General Douglas MacArthur from his post as chief of allied forces during the Korean War.⁴⁸

c) The Mexican Constitution assigns to the President a much greater role, as shared with the Congress, than does the United States Constitution in Article I (8). According to Articles 89 (VII) and 73 (XII), Congress must legislate formal declarations of war but as based on the initiative and facts presented by the President; in the United States, on the other hand, the President is empowered solely to execute the war policy of Congress as Commander-in-Chief. In these respects, the Mexican President's authority is similar to his role in activating a suspension of individual guarantees by the Congress in “states of national emergency”.⁴⁹ Article 89 (VII) further accords to the President the responsibility to “declare war in the name of the United Mexican States” as authorized by Congress. Query: can the President declare war *without* such authorization? According to Professor Carpizo, the Constitution says “no”, but international law, “maybe”. Congress would have to renounce formally the President's policy and actions to involve the nation militarily— difficult to do, at best.⁵⁰

⁴⁶ See, e.g., Mullen, W. F., *Presidential Power and Politics*, New York, St. Martin's Press, 1976, p. 103.

⁴⁷ Freedman, Leonard and Roger A. Riske, *Power and Politics in America*, 5th. ed., Monterey, Calif., Brooks/Cole, 1987, pp. 210-219.

⁴⁸ Miller, Merle, “Firing the General”, Woll, Peter ed. *Behind the Scenes in American Government: Personalities and Politics*, 2d. ed., Boston, Little, Brown, 1979, pp. 157-173.

⁴⁹ See 1917 Constitution, Article 29, and Carpizo, Jorge, *op. cit.*, pp. 121, 122 and 127.

⁵⁰ Carpizo, Jorge, *cit.*, p. 122.

Civilian control of the Mexican military seems secure, at least for the present. Even the consistent critic of the PRI, Mexican sociologist Pablo González Casanova, cites the decrease in federal spending on the armed forces (2.5 per cent in 1981) especially by comparison with the rest of Latin America, the small size of the army compared to the total labor force (120,000 troops in 1982), and the absence of generals in the line of recent presidents (the last being Avila Camacho, 1940-46).⁵¹ There has been no attempted military *coup* since 1937-38, when President Cárdenas personally commanded the crushing of a revolt by General Saturnino Cedillo. President Avila Camacho delivered a final blow to military politicization by removing the military as one of the four "sectors" of the PRI.⁵² The Mexican armed forces have not been dispatched to a foreign combat area since the expeditionary units fighting with allied troops during World War II.

Yet the political role of the military cannot be entirely discounted. As David Ronfeldt, Judith Hellman, and Ed Lieuwen have emphasized, the government has employed the army to suppress student movements, rural guerrilla activities, peasant demonstrations, land invaders, and labor strikes, and to maintain order during contested elections. The thirty-six or so military zone commanders provide the government and the PRI with valuable intelligence about potential trouble spots.⁵³ The Mexican President's control over the armed forces through his budgetary and appointive powers strongly reinforces his role as Protector of Public Peace, to be discussed later. As in all nations with the strong military *caudillo* tradition, however, civilian leaders must always be alert to the emergence of the armed forces in politics.

C. The President as Chief Foreign Policy-Maker

a) The President's role in formulating and executing foreign policy in the United States has received the same favorable response from the national legislature and high court as in the area of national defense and military policy. In the rare instances of conflict between the President and Congress in this area, Supreme Court, with few exceptions, has ruled in favor of the President. Historical factors such as weapons technology, war, economic crisis, and the decentralized power

⁵¹ González Casanova, Pablo, *Democracy in Mexico*. New York, Oxford U. Press, 1972, pp. 36 and 37; Hellman, Judith Adler, *op. cit.*, *supra* note 23, p. 235.

⁵² Lieuwen, Edwin, *Mexican Militarism: The Political Rise and Fall of the Revolutionary Army, 1910-1940*. Albuquerque, U. of New Mexico Press, 1968, p. 308.

⁵³ *Idem*, p. 309, and Hellman, Judith Adler, *cit.*, p. 236.

structure of Congress have required the Nation "to speak with one voice." Examples:

1) *United States v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936), declaring that the President's power to prevent the sale of arms to Bolivia during a foreign war is founded in the "inherent" power of the President to make foreign policy, especially when the Congress has so authorized, as it did broadly in this case with the Embargo Act of 1934;

2) Other important decisions affirming the foreign policies of presidents include those that approved his power to use "executive agreements" instead of the treaty-making process —i.e., agreements not requiring Senate approval, and constituting the great majority of U.S., international accords in economic and military matters— per *U.S. v. Belmont*, 301 U.S. 324 (1937) and *U.S. v. Pink*, 315 U.S. 203 (1942); to recognize foreign governments (*Guaranty Trust of New York v. U.S.*, 304 U.S. 126 (1938)); to ratify foreign "acts of state" against private property of United States citizens (*Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 1964), and *Oetjen v. Central Leather Co.*, 246 U.S. 297, 1918); to rule with finality on foreign airlines routes involving U.S. carriers (*Chicago & Southern Airlines v. Waterman SS Corp.*, 333 U.S. 103, 1948); to interpret treaties as conclusive or self-executing (*Terlinden v. Ames*, 184 U.S. 578, 1948); to determine whether a foreign government has sovereign immunity in civil lawsuits (*Ex parte Peru*, 318 U.S. 578, 1948); to deport foreigners, though with minimum due process required (*U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 1950); and, in a decision with great meaning for presidential power within the *federal* system of the United States, to affirm a 1918 law recognizing the federal government's obligation to enforce a treaty with Canada to protect migratory birds, and under which the President has great discretion when conflicting with the powers of individual states (*Missouri v. Holland*, 252 U.S. 416, 1920).

3) More recent decisions following this pattern of favoring presidential autonomy in foreign policy include:

Goldwater v. Carter (444 U.S. 996, 1979), wherein the Supreme Court without oral argument let stand a court of appeals decision upholding President Carter's termination of the Mutual Defense Treaty with Taiwan without the consent of Congress. Dictated by a desire for improving relations with the People's Republic of China, Carter's notification to Taiwan was challenged by several U.S. senators arguing that because the Senate had ratified the treaty, it should consent to its

abrogation. The administration defended its action, saying the treaty itself required only a year's notice by either signatory. The Court's denial of review should be noted for its distinguishing presidential independence in foreign affairs from its dependence on Congress in dealing with internal matters.⁵⁴

Dames & Moore v. Regan (101 S. Ct. 1981), affirming President Carter's executive agreements with Iran to secure the release of American hostages held by Iran during 1979-81. President Carter had revoked all permits and licenses of Iran creditors to comply with Iranian--American agreements resulting in the hostage release. President Reagan then confirmed these agreements by his own executive order soon after taking office. The Supreme Court upheld the denial of American creditor complaints against these two presidential actions by a federal district court. The decision on the merits greatly reinforced the status of executive agreements to by-pass the treaty process, via the thesis that congressional acquiescence or inaction means congressional approval and Supreme Court deference to the executive in foreign policy.

b) Through several legislative acts, Congress has delegated enormous powers to the President for conducting foreign relations. Though too many to specify here, Michael Parenti has named some 470 of such laws granting the President authority to seize private property, declare martial law, control transportation, restrict travel, and determine the terms and volume of international trade.⁵⁵

Examples:

1) National Security Act of 1947, discussed above (section IV. 2. A. f. 2) *supra*), authorizing "declarations of emergency" under certain circumstances as definable and reportable by the President after consultation with his National Security Council (see the criticisms of President Reagan and his NSC staff on this point regarding the Iran-*contra* arms transfers, in Senator Muskie's summary for the Tower Commission Report,⁵⁶ cited *infra*);

2) Reciprocal Trade Agreements Act of 1934, permitting the Pres-

⁵⁴ Mason, A. T. and D. G., Stephenson, *American Constitutional Law: Introductory Essays and Selected Cases*, 8th. ed., Englewood Cliffs, N. J., Prentice-Hall, 1987, p. 84.

⁵⁵ Parenti, Michael, *Democracy for the Few*, 4th. ed., St. Martin's Press, 1983, p. 277.

⁵⁶ Tower, John, Senator, Chairman, "The Tower Commission Report: The Full Text of the President's Special Review Board, *New York Times* February, 1987.

ident to modify tariffs, "as may be necessary", through executive agreement instead of treaties or laws requiring congressional approval;

3) Trade Expansion Act of 1962, Section 232(b), authorizing the President to "adjust" import fees when he determines that such imports "threatens to impair national security." A federal district judge challenged an executive order of President Carter in 1980 imposing a surcharge on petroleum imports, but this kind of ruling is exceptional (see *Independent Gasoline Marketers Council v. Duncan*, 492 F. Supp. 614, 1980; also "Limitation on Presidential Power", *infra*).

4) International Emergency Economic Powers Act, sections 1701-06, providing for national economic emergencies as declared by the President, who can then transfer or prohibit the sale of foreign goods (see especially 1702(a) (1) (B)). This was the statutory basis of two presidential actions against Iranian creditors in 1981, and affirmed by the *Dames & Moore* decision, *supra*.

c) Three sources of authority support the Mexican President's independent conduct of foreign relations:

1) Article 89(X) of the 1917 Constitution empowers the President to "direct diplomatic negotiations and make (*celebrar*) treaties with foreign powers, submitting them for ratification by the Federal Congress." Reinforced by his appointive and removal powers and constitutional status as Chief Executive, the President is uniquely the national representative in international affairs. According to Cesar Sepulveda, his actions on behalf of Mexico are considered to be direct "acts of state".⁵⁷

2) The President's power to make and negotiate treaties is subject only to approval by a simple majority of those present in the Senate, unlike the United States where a two-thirds vote of the entire membership is required (see U.S. Constitution, Article II(2), and Mexican Constitution, Article 76(I)) Although Mexico's Article 76(I) subjects both treaties and "diplomatic agreements" (*convenciones diplomáticas*) to such majority approval, the language does not include "advise and consent" — only the power to reject or accept presidential initiatives. Further, the President's unquestioned control over the Senate through his role as Chief of Party, the PRI, virtually assures positive consideration in that body. Mexico thus avoids the United States practice of "executive agreements", discussed above, which enable presidents to by-pass the Senate in reaching and enforcing agreements with other

⁵⁷ Quoted in Carpizo, Jorge, *op. cit.*, p. 131.

nations. Mexican presidents have recently resorted, nonetheless, to a form of executive agreement (*convenio ejecutivo*) which avoids even the *pro forma* requirements of Article 76(I). This practice has included President Echeverría's creations of the Latin American Economic System (SELA), a maritime development enterprise for Central America and the Caribbean, commercial agreements with India and Brazil through an exchange of diplomatic notes, and exchanges of commercial and technological information, equipment, and expertise with several Central and South American nations.⁵⁸ Professor Carpizo and others believe that such activities indicate lack of respect for both the Senate and the Constitution (*loc. cit.*).

3) Ancillary powers can also give the Mexican President great flexibility and impact in crisis or politically explosive situations; these include his powers to recognize or no recognize foreign governments, break off diplomatic relations, enter into alliances, make foreign policy pronouncements, and control the votes of Mexican delegations to international organizations such as the United Nations and the Organization of American States. These give the President his independent power to conduct relations and make foreign policy, and suffer fewer formal and institutional constraints as compared even to the awesome power of the United States President (see *infra*, "Limitations on Presidential Power"). Nonetheless, Mexican presidents must keep an eye to the winds of public opinion when considering radical departures from traditional policies. Luis Echeverría's hasty support of the anti-Zionist resolution in the United Nations General Assembly in 1975, resulted in a disaster for the Mexico's tourist trade and an unseemly retreat from that position by the Government.⁵⁹

D. The President as Protector of Internal Peace

a) Both the Mexican and United States presidents possess broad powers to repress domestic violence as founded in their respective constitutions. Judicial and legislative affirmations have reinforced such authority. In the United States, the President has the duty under Article IV(IV) to provide military assistance to any state on application of a state legislature or governor to curb internal violence (see *Luther v. Borden*, 7 How. 1, 1849). From the Whiskey Rebellion forward, presidents have been asked for aid, either because of rebellion

⁵⁸ *Idem*, pp. 132 and 133.

⁵⁹ *Idem*, p. 133, and Riding, Alan, *op. cit.*, *supra* note 24, p. 347.

against a lawful state government or because of riots arising from conflicts such as labor strikes. If the disorder results in violation of federal law, the President may then act pursuant to his authority under Article II "to take care that the laws be faithfull executed. . ." He acts as commander-in-chief in directing federal troops once committed.⁶⁰

Even without approval of a state governor, the President can use military force or other means to fulfill his obligation to "faithfully execute" the laws (*In re Debs*, 158 U.S. 546, 1895). Martial law may be authorized whenever a state governor or the President considers it necessary to restore public order (e.g., *Moyer v. Peabody*, 212 U.S. 78, 1909; *Sterling v. Constantin*, 287 U.S. 378 1932). *In re Neagle* (135 U.S. 1, 1890), however, is the fountainhead of the President's sweeping and unilateral power to preserve domestic order. The case involved a federal marshal (Neagle) who shot a man who had threatened the life of a famous and long-time justice of the Supreme Court, Stephen Field. The marshal was accused by state authorities of murder. In considering Neagle's appeal, the Supreme Court had to decide if the President's authorization of the marshal to defend Field without express congressional mandate was "consistent with the laws of the United States." The Court affirmed such presidential authority, and added that he had the "implicit" power to protect the internal "peace" of the United States under his executory functions. *In re Neagle* helped to mold the doctrine of "inherent powers" as established by *U.S. v. Curtiss-Wright Export Corp.* (1936) which affirmed the President's foreign-policy authority (see *supra*, IV. 2.c a).

b) The Mexican President, likewise, has a broad range of options in dealing with threats to internal order. The Constitution (Article 89, VI) empowers him "to dispose of all permanent military forces . . . for the internal security and external defense of the Federation," followed by a similar grant of authority over the national guard (Section VII).

After some debate over whether Congress should be involved in such presidential decisions, in the constitutional assembly of 1824, the idea of cointervention was dropped and never reinstated.⁶¹ This compares with the United States President's authority to "federalize" the national guard of a state and use is against persons interfering with federal court orders as well as, of course, in times of war or

⁶⁰ Mason, A. T. and D. G. Stephenson, *op. cit.*, *supra* note 54, p. 83.

⁶¹ Carpizo, Jorge, *cit.*, pp. 126 and 127.

national military mobilization. Recent U.S. presidents have invoked this power against civil disturbances and obstructions of federal court orders to integrate racially Little Rock High School in Arkansas (Eisenhower, 1957), University of Alabama (Kennedy, 1962), and the University of Mississippi (Johnson, 1965). Unlike Mexico, however, U.S. presidents have employed broad statutory delegations by Congress rather than unilaterally interpreting their constitutional powers.⁶² Part of the reason for this difference may be that the United States Constitution gives to *Congress* the control of "the militia to execute the laws of the Union, suppress insurrections, and repel invasions" (Article 8/8). The only constitutional restriction in Mexico is that the Senate must consent to presidential use of the national guard outside of their respective states (Article 76, IV).

The main force of such repressive power for the Mexican President, of course, is the regular military, not the widely scattered and weak local militia. Through his military zone commanders (39 as of 1984), the President can dispatch troops quickly and effectively to any trouble spot in the nation. Recent major examples: occupation of the National Polytechnic Institute after student demonstrations, 1956; suppression of the national railway strike, 1959; and the most traumatic, the attack on student demonstrators during the Olympiad summer of 1968.⁶³

The Mexican President's power to suspend individual guarantees in the name of a national emergency constitutes a final and most significant comparison with U.S. presidential declarations of martial law and intervention. The Mexican Congress and Council of Ministers (cabinet, as renamed in these situations) must approve such actions but only on the initiative and the facts submitted by the President. This must be done and an emergency actually declared, however, *before* the President can legislate via decree on the basis of his emergency powers. The policy areas of such decrees furthermore must be specifically authorized by the Congress.⁶⁴ The President's political controls over the Congress do not make this constitutional requirement insuperable.

E. The President as Chief Legislator

a) Sources of power in the constitution, federal law, court decisions,

⁶² Corwin, E. S. and J. W. Peltason, *Understanding the Constitution*, 9th. ed., New York, Holt, Reinhart, & Winston, 1982, p. 68.

⁶³ See Carpizo, Jorge, *cit.*, p. 127, citing Jorge Alberto Lozoya lectures, in 1977.

⁶⁴ *Idem*, pp. 100-103; per Constitution, Article 29.

and custom have given "activist" and "stewardship" presidents of both countries the tools to control the agendas of their national legislatures, manipulate outcomes, and even legislate on their own without the formal consent of either house of the Congress.

b) Articles I and II (2,3) of the United States Constitution provides three such instruments. The President has two types of veto power, the regular and "pocket," pursuant to Article I (7). The pocket veto applies to any legislation passed by Congress within ten days of adjournment which the President does not sign. The first President to employ the veto frequently was Cleveland — 413 in four years (1888-89)! The Congress was able to override, requiring two-thirds vote, only twice in that period. President Franklin Roosevelt registered 635 vetos (1933-45), but Congress could note override more than nine times. Figures, for recent presidents are as follows:

	<i>Regular Vetos</i>	<i>Pocket Vetos</i>	<i>Overrides</i>
Kennedy	12	9	0
L. Johnson	16	14	0
Nixon	24	19	6
Ford	44	22	12
Carter	13	18	2
Reagan (to 1984)	18	21	4

Important to note are the many times that presidents facing a Congress dominated by the opposition party exercised their veto power in comparison with those who did not; e.g., Nixon, Ford, and Reagan. President Eisenhower recorded 181 vetos over eight years (1953-61), with only two overrides from Congress: but Truman took twelve overrides of 250 vetos in almost the same period of time (1945-53). Yet both leaders confronted hostile majorities during part of their presidential terms.

c) Presidents have used the "State of the Union" address before Congress and other speaking opportunities such as the annual economic message to command the agenda of the legislature by way of his policy recommendations. The State of the Union is mandated by the Constitution (Article II/3), the economic address by the Employment Act of 1946.

d) A third constitutional tool for the President as chief legislator is his power to convene extraordinary sessions of Congress. However,

presidents have rarely used it; e.g., President Roosevelt's call for declaration of war against Japan after the attack on Pearl Harbor.

e) The most persuasive of legislative powers over the Congress are extra-constitutional. As chief of his party, the President can mobilize his members of both Houses behind his programs through a close working relationship with the congressional leaders of the same party. The latter include the Speaker of the House (if the presidential party has a majority), the Majority or Minority leaders of the Senate and House, the party "whips" of both houses, the chairmen of various partisan steering committees and caucuses. The President's influence on open floor votes, even among members of the opposition party, is frequently decisive; his impact is less visible on members voting in the standing committees and sub-committees. Even in the most critical times, when presidents have reached the bottom of public opinion polls, no president during 1953-84 ever scored less than 53 per cent (Nixon, late 1972) in congressional roll votes on bills which he supported.⁶⁵

f) Building on their constitutional powers as "chief executive" and to "take care that the laws be faithfully executed" (Article II/1), modern presidents have amplified their use of the Executive Order to control their own executive agencies in the Federal Government. The President can therefore directly *legislate* in very significant ways through such orders, mainly because the federal bureaucracy has grown into a Fourth Branch of the government. Examples of more important executive orders by recent presidents include:

— Order No. 12092 by President Carter directing the Council of Wage and Price Stabilization to formulate voluntary limits on wages and prices and commanding that all federal contracts and purchasing comply with such limits. The latter included all salaries paid through federal contracts with civilian enterprises. A federal court of appeals affirmed such authority as based on the Procurement Act (section 3(b) which grants to the President the power "to promote economy and efficiency in purchasing," and this was sustained when the Supreme Court refused to review the case (*AF of L - CIO v. Kahn*, 618 F. 2d 784, 1979; *cert. denied*, 443 U.S. 1915, 1979).

— Order No. 12356 by President Reagan restricting divulgence of information to the Congress and the press which pertains to "national security."

— Order No. 12391 by President Reagan imposing limits on infor-

⁶⁵ Congressional Quarterly, Congressional Quarterly Almanac of 1984, Washington, D.C., 1984, p. 19C.

mation, documents, and other data disseminated by the federal bureaus all in the name of budgetary reductions.

— Order No. 12362 by President Reagan promulgating regulations limiting employment in countries termed “danger zones” by the State Department.

Important executive orders in the more distant past include President Franklin Roosevelt’s authorization to inter Japanese Americans, whether citizens or aliens, in “relocation camps” on the West Coast for the duration of World War II; President Truman’s order to racially integrate the armed forces in 1948; and President John Kennedy’s mandate that all federal grants and contracts require anti-discrimination compliance by those receiving federal funds.

g) The President of Mexico likewise has broad legislative powers, greater even than the United States President. Decision-making required during time of internal and foreign emergencies, the need for the technical expertise of the Executive, and the requirement of precision in government regulations all are reasons explaining the Chief Legislator role in both countries.⁶⁶ Beyond these, however, political and constitutional features unique to the Mexican system account for a presidential legislative role that is different from the United States Presidency in several respects. The most important contrast is the Mexican President’s leadership of the party dominating the election process and both houses of the Congress since the 1917 Constitution was put into effect. As mentioned earlier, no opposition party has ever won a seat in the Federal Senate or a state governorship. Even with the political reform measure of 1977, and the participation several new political parties and coalitions, The PRI continued to dominate the Chamber of Deputies, though with a small drop in its share. The opposition’s total proportion of the popular vote rose from 20.1 per cent in 1973 and 13.9 per cent in 1976 to 24.3 per cent in 1979 and 30.7 per cent in 1982, while winning some 27 per cent of the 1982 presidential vote; in actual seats held, the opposition, led by the PAN, a conservative-business-Church group, were given 26 per cent in 1979 and 25.3 per cent in 1982, as compared with 17.4 per cent held by only three parties (PAN, PPS, and PARM) under the old system during 1976-79.⁶⁷ There are constitutional factors as well:

h) The Mexican Constitution grants to the President specific authority to legislate in certain emergency situations: (1) threats to inter-

⁶⁶ Carpizo, Jorge, *cit.*, p. 100.

⁶⁷ Middlebrook, Kelvin J., *op. cit.*, *supra* note 27, pp. 24-26.

nal peace posed by invasion or domestic violence, discussed at section IV. 2.D *supra.*; (2) to issue regulations and orders to promote "the general public health," per Article 73 (XVI), specifically with reference to the functions of the Council and Secretariat of Health and Assistance to combat epidemic diseases, drug and alcohol abuse, and environmental contamination; (3) to expedite international treaties through his negotiating power (Article 76/I) and bring internal law into conformity with international and treaty law (per Article 133); (4) to issue general regulations and orders to his own executive agencies so as to conform to the intent or, in the phrase of Article 89/I), "the exact observance of" the statutory law, with the exception of presidential regulations of groundwater allocation which are deemed "autonomous" per articles 21 and 27; (5) to deport any foreigner "whose presence he may deem inexpedient," an apparently absolute power that is constitutionally non-reviewable by the courts (per Article 33); and (6) to control with specific legislation (or "to legislate," per Article 49) a broad variety of matters relating to international and national commerce, including tariffs, import and export quotas or bans, and production controls, all pursuant to Article 131 (for elaboration of all above, see Carpizo, pp. 100-109). More of the latter will be developed under the President's role as Manager of the National Economy, *infra*.

i) The Mexican Constitution (Article 72) accords to the President the power to veto congressional legislation, but with some important differences with the United States counterpart.

1) Mexico has no equivalence with the "pocket veto." Article 72 is very clear: "All bills will be deemed approved by the Executive when not returned with his observations to the chamber of origin within ten working days; if this term expires because the Congress has adjourned or suspended its sessions, the return must be made during the first working day when the Congress is reconvened" (article 72/B).

2) Long sought but never achieved by United States presidents, Mexico has the "item" (partial) veto. Without doubt, the item veto enhances the maneuverability and thus the bargaining power of the executive in the legislative process, as evidenced by its frequent use in the hands, of most state governors in the United States.

3) The Mexican Constitution prohibits use of presidential vetoes of certain congressional actions: decisions of any chamber regarding election disputes, impeachment proceeding, or any other "exclusive

power" of that chamber; calls for extraordinary sessions and other actions by the Permanent Committee (serving as the interim legislature when congress is out of session); resolutions of both chambers meeting in joint session; and, most importantly, all proposed constitutional reforms or amendments. According to the predominant scholarly opinion, these restrictions are either inoperable or superfluous for the most part. No important action from either chamber has legal effect unless passed by both, and thus at that point subject to veto; the same is true for joint resolutions and interim actions of the Permanent Committee. Regarding proposed constitutional changes, it need only be said that a) the President himself initiates these reforms as Chief Legislator and Chief of Party, along with his other dominant roles in the political System; and b) the Congress requires a two-thirds vote to make such proposals, far less than the proportion of the President's party, the PRI, in the Senate (100 per cent) and the Chamber (75 per cent as of 1985).

Therefore Professor Carpizo's⁶⁸ conclusion is not surprising: that the presidential veto has not played a key role in the legislative process. In the United States, although presidential vetoes have been sustained or unchallenged in nine uses out of ten,⁶⁹ presidents can suffer strategic losses on key bills when the Congress overrides. Examples of this occurred recently for President Reagan. In the aftermath of the scandal involving the Iran arms sale and illegal *contra* military aid, Reagan lost successive override votes on four congressional bills within six months on such wide-ranging issues as South African sanctions, federal aid to the homeless, expansion of federal investment in clean water, and, most recently, a bill providing almost 90 billion dollars in highway construction and rehabilitation (April, 1987).

j) *Informes presidenciales*, or presidential messages to Congress, are important tools for the Mexican President as Chief Legislator as they are in the United States. Pursuant to Article 69, the President must inform Congress on the opening of the annual session (usually September 1) regarding the "general state" of the nation as "protected by the public administration." In contrast to the United States, the President of the Chamber of Deputies ("Speaker") answers after the Chief Executive concludes, predictably a eulogy. What was a constitutional duty, now has become a political ceremony, laced with the President's priorities serving as the congressional agenda.⁷⁰

⁶⁸ Carpizo, Jorge, *cit.*, p. 89.

⁶⁹ *Idem*, p. 92.

⁷⁰ *Idem*, pp. 113 and 114.

k) Its short annual sessions further incapacitates the Mexican Congress and subordinates it to the Executive. In keeping with President Carranza's concern for retaining strong presidential government, the 1917 Constitution (Articles 65-66) limits the ordinary sessions to four months (September 1 - December 31), a reduction compared to previous constitutional provisions in 1857 and 1874.⁷¹ The frequency of national holidays during this period makes serious consideration of bills even more difficult. The Permanent Committee must call for extraordinary sessions of the Congress or any of its chambers, although the President can and often does initiate such a request (per Articles 79/IV and 89/XI). Prior to the 1923 amendments to Article 89(XI), the President alone could convene extraordinary sessions. That amendment thus produced the only constitutional power *lost* to the President since ratification of the 1917 Constitution, and returns the suggestive role of the President to that of the 1824 and 1857 provisions on extraordinary sessions.⁷²

Unlike some of their Anglo-American counterparts, Mexican presidents have had little trouble maintaining disciplined response within their own party and have thus commanded large congressional majorities in favor of presidential initiatives. In one dramatic instance, *priista* Senator Gustavo Guerra Castaños, speaking for the entire Senate in calling for adjournment of the 1977 session, proudly announced his chamber had legislated all bills requested by President Lopez Portillo.⁷³ Indeed, according to Gonzalez Casanova, between 1935-1965, unanimous approval of the vast majority of presidential initiatives was not unusual; dissenting votes never totaled more than 4 per cent the Chamber of Deputies (in 1943 and 1959).⁷⁴

Reason for such legislative subservience to the President as Chief of *partie* PRI include:

- 1) The PRI constitutes the dominant majority of both houses (100 per cent in Senate, currently 75 per cent in the Chamber);
- 2) Rebels will probably lose their political careers because the President controls all major patronage in the federal agencies, state run enterprises, and candidate selection for Congress, state governors, and the Supreme Court;

⁷¹ *Idem*, pp. 110 and 111.

⁷² *Idem*, p. 112.

⁷³ *Idem*, p. 116.

⁷⁴ González Casanova, Pablo, *op. cit.*, *supra* note 51, p. 17.

3) Presidential dispensation of economic benefits to the congressperson's home district or state;

4) Following presidential initiatives requires the least time work and political conflict, and

5) The Constitution bans immediate reelection of incumbents.

Defections from the PRI in Congress are rare and swiftly punished, sometimes severely. Deputy Victor Manzanilla Schaffer offended the majority leader in 1977 by voting against the expropriation of *ejido* farmlands desired by PEMEX. This was a constitutional amendment to Article 27, Mexico's basic agrarian reform law, proposed by President Lopez Portillo. Prevented from presenting his argument on the floor, Manzanilla persisted and then resigned all his positions on legislative committees. He was later reinstated after the presidential initiative prevailed by a vote of 222-4, the dissenting votes cast by Manzanilla and three minor party deputies.⁷⁵

F. The President as Economic Manager

a) The President of the United States is political charged with the role of Manager of the National Economy, but legally has direct responsibility and controls over fiscal rather than monetary policies; *e.g.*, the power to make decisions about the level of federal government spending, revenue sources and taxation, and the size of the federal budget deficit. But the levels of money supply (currency emission and bank deposits) and credit rates are in the hands of the Federal Reserve Board and the private banking sector. The Mexican President, as will be seen, possesses far broader and more direct decision-making authority over both fiscal and monetary policy directions.

b) The core legislation for presidential economic-fiscal powers in the United States is the Employment Act of 1946. Responding to the economic dislocations brought about by the end of World War II, Congress granted to the President broad independent authority "to use all practicable means to promote maximum employment, production, and purchasing power." As mentioned above under the President's role as Chief Executive, the Act also created a Council of Economic Advisers to help with long-range economic research, planning, and policy recommendations. The Budget and Accounting Act of 1921 had already given the President responsibility to submit a single unified budget to Congress which represents all the requests of the federal

⁷⁵ Carpizo, Jorge, *cit.*, p. 116.

agencies and departments. The Bureau of the Budget was reinforced and expanded under the name of Office of Management and Budget in 1971. Both the OMB and the CEA are important tools by the President can persuade Congress and public opinion to support his economic programs, along with the Secretary of the Treasury and of Commerce. The Employment Act further provided the President with an additional communications vehicle when it required him to give an annual economic message to the Congress.

Additional laws delegating to the Chief Executives great economic authority include the Taft-Hartley Act of 1947, by which he can delay major labor strikes through his Attorney General and the courts. Under the Economic Stabilization Act of 1970, the President can invoke wage and price controls without congressional consent; the Office of Price Administration during the Second World War provided the precedent for this kind of extreme regulatory power.

c) The federal courts have generally confirmed these broad economic powers when exercised. In *AF of L v. Kahn* (618 F. 2d 784 1979; cert. denied by the Supreme Court, 443 U.S. 915, 1979), for example, the appeals court sustained an executive order by President Carter, previously mentioned, which imposed voluntary limits on prices and wages for all federal contractors. Although the President's actions were taken in the name of the Federal Procurement Act, the court emphasized Carter's broad authority to "promote economy and efficiency in procurement."

d) The President of Mexico as economic manager possesses even more diverse and wide ranging powers than his United States counterpart. Through the Constitution and statutory delegation, the President can exercise direct control over monetary as well as fiscal policy, consumer prices, supplying basic items in the national diet, capital investment and public works, foreign trade and import tariffs, water conservation, energy policy (petroleum, natural gas, and petrochemicals), tourism, and industrial development. We have already seen the specific instruments of those controls as reviewed under the presidential role as Chief Executive in section IV. 2. *A supra; i.e.*, his authority to direct the budget process as well as the decentralized agencies and "enterprises of state participation." As Professor Carpizo states, "the President is the determining factor in the national economy; his resources and powers are very broad and his decisions, indirectly or directly, affect all the inhabitants of Mexico (at 135).

e) The basic statute so empowering the President, comparable in

importance to the Employment Act of 1946, is the Law on the Economic Powers of the Federal Executive (December 30, 1950). Though rather remotely based on the powers of Congress to regulate commerce and the subordination of private property "to the public interest" (Articles 73/X, and 27(3), 1917 Constitution), the law squarely puts the State in defense and control of the national economy (Antonio Martínez Báez, finance secretary when the law was passed, quoted in Carpizo, p. 136). The President is charged with a number of directive responsibilities including many of the controls mentioned in (d), above, plus clothing, development of raw materials for industry, marketing of industrial and commercial products, technical expertise and equipment vital to national industry which may require waiver of certain tariff at his discretion, price ceilings, rationing of scarce commodities, and even the government's occupying of industries in order to maintain or increase production of goods which the President defines as "indispensable." In 1974, President Echeverría increased such articles subject to price controls to 177; a 1978 executive order reduced this number to 85.⁷⁶ These powers are reinforced and enlarged even more by the President's controls over fiscal policy and the budgetary process; i.e., through his cabinet secretaries of Commerce and Industry, Finance and Public Credit, and Planning and Budget, the Mexican parallel to the OMB in the Executive Office of the United States.

f) In direct contrast to the United States presidency, however, the President of Mexico directly controls national monetary policy. Through his appointive powers and his secretary of finance and credit, the President can manipulate Mexico's central bank, the Bank of Mexico. The Organic Law of the bank, in turn, gives the bank sole power to fix legal deposits of member banks, currency and securities emission, rediscount rates, and international currency exchange rates. Unlike the U.S. Federal Reserve Board, the board of directors of Mexico's central bank serves at the pleasure of the President. Furthermore, the Secretary of Finance and Public Credit can veto any decision of that board (per Organic Law, Article 71). As if to leave no doubt, the Organic Law of the Federal Public Administration (Article 31/IX) authorizes the aforementioned secretary "to direct monetary and credit policy".

g) The Mexican President directly influences the national economy through a plethora of other powers. These powers are subject to few

⁷⁶ *Idem*, p. 137.

judicial or congressional limits, even as compared to the United States presidency:

1) He can, with broad guidelines fixed by Congress, borrow money or make government loans on the public debt; to date exercise of this power has placed Mexico among Latin America's highest debtor nations. Between 1971 and 1975, the national debt octupled and as of 1982, the foreign debt alone rose to more than 80 billion dollars.⁷⁷

2) Through his Secretary of Planning and Budget, he is charged with "planning, authorizing, coordinating, overseeing, and evaluating all programs of public investment" emanating from the cabinet departments and other state agencies and enterprises (per Organic Law, Federal Public Administration, Article 32/VI). This includes great discretion over the amounts and types of foreign investment, especially as controlled through the National Commission on Foreign Investment, which he appoints, and its broad powers delegated by the Congress through the foreign investment law (Article 12);

3) He formulates tax policy independent from Congress (per the Constitution of 1917, Article 74/IV, as amended in 1977), though the latter must approve such a bill, first by the Chamber of Deputies. The secretary of finance may draw upon federal accounts within amendable limits set by the General Law of Public Debt and the Law of Federal Revenue of 1978 (Article 2 of the latter). "Extraordinary economic circumstances" may justify further withdrawals (per the federal revenue law, *infra*), but Professor Carpizo⁷⁸ holds this to be clearly unconstitutional);

4) Another controversial "free hand" exercised by recent presidents relates to exceeding spending limits set by Congress. A 1977 constitutional amendment returned the function of public accountability for all expenditures to the Chamber of Deputies, per Article 74(IV), as it had been since the 1857 Constitution and an 1874 statute. To facilitate its budgetary oversight, Congress created a fiscal accountability office similar to the functions of the General Accounting Office and the Congressional Budget Office in the United States. By this means the two congresses can monitor the executive budget and propose alternatives. Under law, therefore, Mexican presidents cannot exceed spending limits as overseen by the Chamber of Deputies. Yet, as one flagrant example, President Echeverría did so by 48 per cent more than Con-

⁷⁷ *Idem*, pp. 141 and 142, and Riding, Alan, *op. cit.*, supra note 24, p. 149.

⁷⁸ *Idem*, p. 145.

gress had authorized and this added to the already heavy federal budget deficit.⁷⁹ Such controversy provides an interesting contrast to the limits on United States presidential authority to *impound* (hold back) funds authorized by congressional appropriation bills, as will be discussed under "Limits on Presidential Power", *infra*:

5) The Mexican President can control a vast array of agrarian land use and tenure practices. The most significant is his power to issue "certificates of inaffectability" (*certificados de inafectabilidad*) to favored landowners seeking exemption from limits on farmlands to protect the ancient *ejidal* rights so traditional to the Indian-*mestizo* villages of rural Mexico. With such certificates, large landowners may sue for protection against expropriation of their farms, ranches, or waters by petitioning for a writ of *amparo* in federal court (per Constitution, Article 27/XIV, as amended in 1947 at the initiative of President Alemán);

6) Expropriation of private property can be unilaterally "decreed" by the President under the broad authority of Article 27 of the Constitution. Such takings require only the consent of the cabinet acting as the "Council of Ministers" pursuant to the constitutional emergency provisions of Article 29. This was most dramatically exercised in 1938 when President Cárdenas expropriated American and British oil companies, and again in 1981 when, in one of the last acts of his administration, President López Portillo nationalized all private banks and imposed total foreign exchange controls.⁸⁰ Contrast this with the limits on presidentially-ordered occupations of private industry as defined in the U.S. Supreme Court decision of *Youngstown Sheet and Tube Co. v. Sawyer*, discussed in the next section.

V. POLITICO-LEGAL LIMITS ON PRESIDENTIAL POWER IN MEXICO AND THE UNITED STATES

1. The central constraints on presidential power in both nations derive from the conflicts within the political process, rather than legislative, judicial, and even constitutional limits. In the latter respects, however, the American President encounters some major brakes on his authority as compared with his Mexican counterpart. In addition, both presidencies face enormous challenges to their abilities to control their respective party and government bureaucracies. Such failures can

⁷⁹ *Idem*, pp. 149 and 150.

⁸⁰ Riding, Alan, *op. cit.*, pp. 150 and 157-161.

lead to debilitating consequences. Each type of limitation will be summarized below.

2. Although infrequently, the United States Supreme Court and lower federal courts have set limits on the President in the exercise of some important policy-marking functions, both foreign and domestic. These have included court decisions *against*:

A. The suspension of the writ of *habeas corpus* during times of war or civil conflict, whether to avoid either military or civil trials of suspected subversives in areas wherein the regular courts were operational (*Ex parte Milligan*, 4 Wallace 2, 1866), or in situations wherein the military courts had replaced civilian tribunals (*Duncan v. Kahana-moku*, 327 U.S. 304, 1944);

B. The occupation of private property by army troops, in this case steel factories, by order of the President acting as Commander-in-Chief, but without the express authority of Congress and when other statutory remedies existed to stop a prolonged labor strike (such as the injunction power under the Taft-Hartley Act of 1947; see *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 1952);

C. An attempt by the federal government (on orders of the President to his Attorney-General) to prevent a major newspaper from publishing documents classified as "Top Secret" and which had been stolen from a secured research institute (*New York Times v. U.S.*, 403 U.S. 713, 1971, known also as the Pentagon Papers Case);

D. Presidential refusal to spend (impoundment of) funds appropriated by Congress for a variety of public programs and services, in this case Nixon's ordering the Environmental Protection Agency to cut billions from that authorized by the Federal Water Pollution Control Act (*Train v. City of New York*, 420 U.S. 136, 1975); see also the Budget and Impoundment Act passed by Congress during the Court's consideration of the *Train* case;

E. The Attorney-General's authorization of electronic spying ("bugging") of citizens and groups suspected of subversive internal activities (*United States v. U.S. District Court*, 407 U.S. 297, 1972);

F. The dismissal of members of independent regulatory commissions having "quasi-legislative and quasi-judicial" powers conferred by Congress (*Humphreys Executor v. U.S.*, 295 U.S. 602, involving a members of the Federal Trade Commission, and *Weiner v. U.S.*, 357 U.S. 349, 1958, involving the War Claims Commission);

G. Use of "executive privilege" to avoid revealing documents or information, in this case the White House tapes in the Watergate

crisis, when subpoenaed by a federal judge during a criminal trial proceeding (*U.S. v. Nixon*, 418, U.S. 683, 1974; discussed *supra*, section IV. 2. A. d); the decision also *confirmed* the constitutional standing of executive privilege when it might be used in other circumstances);

H. The claim of "absolute immunity" by President Nixon and other members of his cabinet and Executive Office, affirming that they could be open to civil suit for violating rights of privacy of individuals "wiredtapped" in their homes and offices without prior approval or warrant from a judge (*Halperin v. Kissinger*, 606 F. 2d 1192; D.C. Cir. 1979, *cert. denied* by the Supreme Court).

3. The United States Congress also, and more often, has responded to an expanding presidency with restrictive legislation. These occurred particularly during the immediate aftermath of Vietnam and Watergate, and such limits on presidential power were not restricted to internal policy matters. Examples:

A. The Budget and Impoundment Act of 1974, establishing a Congressional Budget Office and permanent budget committees in each house of Congress to strengthen the legislative capacity for sharing responsibility over the budgetary process. It also (through Title X) requires the President to inform the Congress regarding his plan to withhold funds authorized by statute, at which point the Congress has 45 days within which to act against the impoundment;

B. The War Powers Resolution of 1973, seen by several leading scholars as only a partial obstacle to "presidential wars" (see critical discussion at section IV. 2. B. b), *supra*).

C. The Arms Export Control Act, requiring that the President consent to any arms transfers to foreign countries, subject to certain procedural requirements set by Congress (22 U.S.C. 2753 (a),(d)). The President may waive these limits, but only after providing written justification to the foreign affairs and appropriations committees of the Congress, that the arms sales are "vital to the national security interests of the United States" (22 U.S.C. 2374 (3)).⁸¹ This was one of the major statutes allegedly violated in the *Iran-contra* arms transfer crisis facing the Reagan presidency as of mid 1987.⁸²

D. The National Emergencies Act of 1976, terminating all permanent powers held by the executive resulting from past emergencies to take effect in 1978; all future emergencies must be declared by the

⁸¹ Tower, John, *op. cit.*, *supra* note 56, pp. 75, 76 and 524.

⁸² *Ibidem*.

President for a specific and temporary period.⁸³ However, there still exist some 470 separate statutes that allow the President to "seize property, institute martial law, control all transportation, and restrict travel," even if for specified times;⁸⁴ for example the International Emergency Economic Powers Act (sections 1701-06), discussed *supra*, IV. 2. C. b).

4. The ultimate constitutional mechanism for correcting abuse of power is impeachment, pursuant to Article II (4):

The President, Vice President and all civil officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors.

Only one President, Andrew Johnson in 1867, was "impeached" by the House, but he was acquitted by one vote in the Senate. Attempts to impeach presidents Tyler and Nixon were made in the House, but only in Nixon's case did the articles of impeachment clear the judiciary committee. Nixon resigned in 1974 before the process could continue to a full House and Senate vote. According to Corwin and Pelatason, "impeachable offenses need not be criminal in character but must reflect a serious dereliction of duty, a substantial violation of constitutional and legal responsibilities, and a sustained failure to meet one's obligations".⁸⁵

5. The divisions of constitutional authority between the states and national government pursuant to the *federal system* also limit presidential power. Governing authority is effectively decentralized throughout the fifty state governments, each with their own civil, criminal, and administrative codes and under the protective umbrella of the "residual powers clause" of the Tenth Amendment. Although presidents and the Congress can reduce federal funding and involvement with local services and policies and thus their influence, the states have their own, albeit limited resources to deal with their own problems. A dramatic example of this pattern of increased state control following in the wake of federal budget and regulatory cutbacks is public education.

⁸³ Zeidenstein, Harvey G., "The Reassertion of Congressional Power: New Curbs on the President", 93 *Political Science Quarterly* 393 (Fall, 1978).

⁸⁴ Parenti, Michael, *op. cit.*, *supra* note 55, p. 277.

⁸⁵ Corwin, E. S. and J. W. Peltason, *op. cit.*, *supra* note 62, p. 92.

The reductions in federal spending under the Reagan Administration during 1981-85 and taxpayers protests against the local property tax to finance local schools propelled the state governments into centralized policy-makers over public education.⁸⁶ On the other hand, expanded federal regulation of schools beginning with the civil rights laws and Supreme Court decisions in the 1960's has not effectively curbed independent state and local school board authority over education policy. The latter includes employment standards for teachers, curriculum content, instructional aids, construction funding, student discipline and due process right, and parent- teacher relations.⁸⁷ President Reagan and his Department of Education have little effect on the overall operation of the nation's school districts, even less than other presidents.

6. Presidential power and influence is also limited by the federal or highly decentralized structure of the political party system in the United States. In the 1984 election, for example, President Reagan exceeded even his decisive victory of 1980 over incumbent President Carter by winning in every state except Democratic candidate Walter Mondale's home state of Minnesota. He also maintained Republican control of the Senate. But the Democrats continued their majority of the House and did well at the state level - controlling 34 governorships (unchanged), 65 per cent of the state legislatures, and, in 18 states compared to only four for the Republicans, the governorship, the upper house, and lower house combined (*Public Opinion* 7 (Dec.-Jan., 1985, 26).

The result of all this,⁸⁸ has been an era of "divided government" and post-"Imperial" weakening of presidential power. The former is characterized by Republican captures of the presidency in four of the last five elections (1968-84) and the Senate for part of that time (1981-87), while the Democrats have dominated the House and state offices without interruption. The latter has been characterized by the

⁸⁶ Schwarz, Carl E., "Federalism and the Public Schools in the United States of America: Inverse Patterns in the Distribution of Power", Research paper delivered at the First International Congress on the Constitutional Law of Provincial Autonomy (I Congreso Internacional del Derecho Constitucional Autonómico), at Peñíscola, Castellón, Spain; November, 1985. (Forthcoming in published proceedings of the Congress by the Law Faculty, University of Valencia, Spain.)

⁸⁷ *Idem*, p. 14.

⁸⁸ Florig, Dennis, "Presidents, Parties, Philosophies, and Policies: From FDR to Ronald Reagan" (Paper presented at Annual Meeting of Western Political Science Assn. Anaheim, March 27, 1987).

several aforementioned efforts of Congress to reassert its powers, which after the debilitating revelations of the recent Iran-*contra* scandal, will continue unrelentingly in the near future.

7. Presidents of the United States, even the most vigorous and assertive, find it difficult to know, supervise, let alone control every action within their own executive agencies that may have major consequences for presidential objectives. President Reagan's failure to manage the Iran arms sale-*contra* military aid initiative illustrates a problem not uncommon to all modern presidents in their capacities as Chief Executive:

In his obvious commitment [to the Iran arms sale exchange for the release of American hostages], the President appears to have proceeded with a concept of the initiative that was not accurately reflected in the reality of the operation. The President did not seem to be aware of the way in which the operation was implemented and the full consequences of U.S. participation.⁸⁹

And again, from the Tower Commission:

The President's management style is to put the principal responsibility for policy review and implementation on ... his advisors. Nevertheless, ... the President should have ensured that the National Security Council system did not fail him. ... He must insist upon accountability. For it is the President who must take responsibility for the NSC system and deal with the consequences.⁹⁰

Even when the President uses the bureaucratic process to work his will with Congress and the public, he frequently, in the words of the Tower Commission,

encounters a natural resistance from the executing departments. While this resistance is a source of frustration to every President, it is inherent in the design of the government. It is up to the politically appointed agency heads to ensure that the President's goals designs and policies are brought to bear on this permanent structure ... The President must act largely through them ...⁹¹

⁸⁹ Tower, John, *op. cit.*, p. 79.

⁹⁰ *Idem*, pp. 79 and 80.

⁹¹ *Idem*, p. 89.

Joel Aberbach⁹² has captured this accountability problem for presidents through his study of senior civil servants and “super-grade civil servants” (SCS and SGCS) during the Nixon administration. He found that most of these agency heads were hold-over Democrats and more liberal than the President’s policy goals. Ford followed by weakening the White House Staff and strengthened the cabinet departments — and thus the old-line bureaucracy. Reagan reasserted control through the “ideological mandate” approach to his own SGCS appointments, as opposed to the agency heads independently responding to “market forces” lobbying for group self-interest or acting as “idea innovators” free from White House direction. Reagan’s decisive victories in 1980 and 1984 strengthened his control over SCS and SGCS appointments. But his practice of massive delegation to subordinates helped set up the Iran-*contra* fiasco of 1987.

8. Fluctuations in the health of the national economy due to forces beyond the President’s immediate control can trigger negative responses from influential labor and business groups which, in turn, can derail presidential programs in the Congress. Ben W. Heineman has focused well on this problem and implicit limit on presidential power:

Fifteen years ago, the economy was a strong ally of presidential power. It appeared to respond magically to executive will, providing on a lavish scale the resources needed for a long agenda of social reforms. Today the economy is an adversary of presidential power - perhaps the greatest adversary. It appears to mock all executive ministrations, provides insufficient resources for a host of governmental objectives and vexes presidents with choices between politically unacceptable evils”.⁹³

9. The important limits on the Mexican President vary significantly with those on the President of the United States. Constitutional restrictions exercised through the impeachment process, the Congress, and the Supreme Court are more formal than real threats to presidential power abuses. Professor Carpizo distinguishes five potential powers

⁹² Aberbach, Joel, “Impact of Reagan Administration on the Bureaucracy”, Speaker at Symposium on “The Reagan Presidency: An Assessment” (California State University at Fullerton, sponsored by the CSUF Political Science Department, April 23, 1987).

⁹³ Heineman, Ben W. Jr. and Curtis Hessler, *Memorandum for the President: A Strategic Approach to Domestic Affairs in the 1980s*, New York, Random House, 1980, p. 56.

of Congress to control the Executive: (a) the process of impeachment, (*juicio político de responsabilidad*) which is similar to the U.S. Constitution, with the difference that Mexico's constitutional phrase, "for treason and grave crimes against the common order" (commonwealth), pursuant to Article 108, has never been tested in any attempt to impeach a President; therefore, the scholarly consensus on the U.S. grounds for impeachment (discussed under V. 4. *supra*) is uncertain in Mexico, although opinion leans toward the broader view: that the Senate may remove for attacks or abuses against democratic or constitutional institutions and rights;⁹⁴ (b) power of approving or modifying the presidential budget by the Chamber of Deputies; (c) ratification of certain presidential initiatives such as treaties, appointments to high office, and travel abroad; d) the authority of the Permanent Committee to convene Congress into extraordinary session, a potentially important power given the short duration of ordinary sessions (four months) and the tendency of Mexican presidents to legislate by decree when Congress is idle; and (e) the implicit powers (per Article 73) to issue laws to effect congressional functions granted in the Constitution; i.e., to initiate checks on executive powers.⁹⁵

10. The Supreme Court and federal lower courts have enormous potential power to curb presidential excesses because of their unique authority to issue the all-purpose Constitutional Writ of *amparo*. Directed solely against abuses of governmental authority, the writ is specifically authorized by the Constitution (Article 107), and combines the judicial functions of several Anglo-American writs and appeals such as habeas corpus, prohibition, injunctions, mandamus, coram nobis, and certiorari. No official is exempt from its jurisdiction, as "responsible authorities", not even the President. The *amparo* is heavily litigated and frequently successful in civil, labor, criminal, and administrative-fiscal law cases. But the Mexican federal courts view attacks on presidentially-initiated directives as "political questions" and thus off-limits to critical review.⁹⁶ Because of its focus on individual rights violations by all manner of authority, the frequency and types of cases

⁹⁴ Carpizo, Jorge, *cit.*, pp. 209-214.

⁹⁵ *Idem*, pp. 216 and 217.

⁹⁶ Schwarz, Carl S., "Jueces en la penumbra: la independencia del poder judicial en los Estados Unidos y en México." II *Anuario Jurídico* 143 (1977), translated version of "Judges under the Shadow: Judicial Independence in the United States and Mexico", III *Calif. Western International Law Journal* 260 (1973); and "Rights and Remedies in the Federal Trial Courts of Mexico and the United States", IV *Hastings Constitutional Law Quarterly* 1 (Winter, 1977).

litigated through *amparo* may well act as a political barometer of discontent with the Government in general.

11. In addition to the relative independence of the federal judiciary, Carpizo cites five other concrete sources of irritation or brakes on presidential power (1983, 217-19). First and foremost, of course, is the absolute prohibition on reelection after his six-year term (*sexenio*) ends (per Article 83, 1917 Constitution). Even before, at varying points prior to the close of his term, the President struggles against the "lame duck" syndrome, particularly as his successor becomes *El Destapado*. Alan Riding⁹⁷ poignantly describes "the Fall":

For the system to work, the President must be strong (during the six-year term), and for his authority to be recognized, he must turn - at least symbolically - against his predecessor. By sacrificing the officials and policies of the past in an Aztec ritual, pent-up frustrations are thus released and loyalties renewed. At the same time, unwilling to accept that the ritual will eventually demand his own destruction, the incumbent struggles to project his power and influence beyond his own administration . . . Once he picks his successor, the President therefore becomes obsessed with his own place in history and, to judge by the last three regimes, the waning power of his final months in office creates a sense of despair. Concerned more about himself than the nation, and increasingly resigned to "betrayal" at the hands of his own personally chosen successor, he may then act irrationally.

12. As in the United States, fluctuations in the national economy prompted by both domestic and international stimuli can delimit the options available for Mexican presidents as well as the degree to which his policy decisions are successful. In responding to economic crises, the President also must consult the several sectors within the PRI - agrarian, labor, and "popular" - as well as powerful bourgeoisie-private industrial groups outside the official party "family". Even in the day-to-day operations of government selection of ranking officials (including presidential succession), such groups can have strong influence on final decisions. The two most dominant and permanent business group acting on the President and his agency heads are the National Confederation of Chambers of Industry (CONCAMIN) and the National Confederation of Chambers of Commerce (CONCANA-

⁹⁷ *Op. cit.*, *supra* note 24, p. 72.

CO). They have direct influence in the "popular" sector of the PRI which controls the appointments of almost every level of the government bureaucracy and several elective representatives as well.⁹⁸ Although, according to Judith Hellman, it is "clear that the bourgeoisie does not 'rule' directly, that it does not control the functioning of the Mexican state in any absolute sense, and that the government is run by a political elite that is . . . distinct from the industrialists, bankers, commercial landowners, and commercial elite who make up the bourgeoisie,

... it is equally clear that the influence of the bourgeoisie over the policy makers who manage the state is more powerful than that of any other group in society, if it is not, at all times absolutely determinant.⁹⁹

Mexico's economic dependency on the advanced industrial or developed nations such as the United States and Western Europe is a third and closely related constraint on presidential controls. Carpizo¹⁰⁰ cites as examples foreign credit restrictions, high tariff barriers against certain Mexican exports, and limits on freedom of movement and travel by Mexican nationals, particularly as laid down in United States immigration policies in regard to the migration of labor. And close connection with U.S. business partners can produce American policies and diplomatic pressures "to push the Mexican president along lines more satisfactory to foreign and domestic capital".¹⁰¹ President Echeverría felt this power directly:

By withholding investment funds and encouraging its foreign business partners to do likewise, the national bourgeoisie underscored its position of power and expressed its discontent with Echeverría's policies as it set off or contributed to a series of serious economic problems (*loc. cit.*).

Fourth, the Mexican President and his PRI leadership have had to contend with several independent labor and agrarian groups bolting the main sectors of the dominant party. The most serious of these have arisen in the rural areas, in attempts to reassert the revolutionary land

⁹⁸ Hellman, Judith Adler, *op. cit.*, *supra* note 23, p. 211.

⁹⁹ *Idem*, p. 55.

¹⁰⁰ Carpizo, Jorge, *op. cit.*, p. 219.

¹⁰¹ Hellman, Judith Adler, *op. cit.*, p. 211.

reform/distribution objectives of Emiliano Zapata and Lázaro Cárdenas. These attempts to organize and press the PRI for greater internal democracy and the government to pursue more equitable agrarian policies usually end up in one of two ways: total co-optation of the group within the Agrarian sector controlled by the National Confederation of Farmers (CINC), or violent repression. The latter is by far the rarest outcome. The rise and co-optation of the Independent Farmworker's Central (CCI) during the López Mateos government (1958-64) is perhaps the most famous example. Its neo-Cardenist agitation did produce more liberal land distribution measures for the first time since Cárdenas (1934-40), until its eventual agreement to join the CNC. Similar fates and results were associated with more recent movements such as the National Coordinator of the Plan de Ayala (CNPA, named after the Zapata program), the Regional Union of Peasant Ejidos of Huasteca (URECH), the Union of Peasants and Workers of Mexico (UGOCM), the Mexican Agrarian Council (CAM) and the long and provocative history of the Central Union of *ejidatarios* in the Laguna region of north-central Mexico (1939-68) until its assimilation by President Díaz Ordaz. President Echeverría was able to bind all the disparate and once-independent peasant groups under the Ocampo Pact, with the exception of the Plan de Ayala coalition of *ejidos* in central states. Organized in 1983, the coalition is now watched warily by the government. This group, too, will probably be assimilated.¹⁰² Those few who do not compromise or cooperate have been killed, such as Rubén Jaramillo, Francisco Medrano, Jenaro Vázquez and Lucio Cabañas or radical labor organizers like Efraín Calderón Lara.¹⁰³ The sum effect of all these, often spontaneous movements is to keep the President's eye riveted on the plight of the mass workers, especially the peasant half of the population.

Finally, the "semi-free" newspapers¹⁰⁴ provide some occasional pointed criticism of government and presidential actions or inactions. Government controls over advertisements, newsprint, government "perqs" to reporters, covered under earlier sections, plus the limited readership of editorials in outlying areas tend to minimize the independence and influence of the Fourth Estate.

¹⁰² *Idem*, regarding the Central Union story, pp. 140-163, and Paoli, F. J., *op. cit.*, supra note 26, pp. 99 and 100; Riding, Alan, *op. cit.*, supra note 24, pp. 184-189.

¹⁰³ See Hellman, Judith Adler, *cit.*, p. 164, and Riding, Alan, *cit.*, p. 186.

¹⁰⁴ Needler, Martin C., *op. cit.*, supra note 19, p. 60.

VI. CONCLUSIONS: REFORMS TOWARD LIMITING AND REINFORCING PRESIDENTIAL POWER IN THE UNITED STATES BASED IN PART ON THE MEXICAN EXPERIENCE

The consensus among recent scholars in the United States is that the presidency has acquired a complex of powers which overwhelm the limits imposed on it by the Congress, the Supreme Court, the elections process, and the constitutional principle of federalism. As Theodore Lowi¹⁰⁵ trenchantly observes,

The decline of institutionalized restraints and of clear legislative rules has not been compensated for by any strengthening of informal restraints, such as programmatic political parties . . . All things considered, it seems rather clear that a presidential system, especially one constructed the ways ours was constructed, pushes liberalism toward an extreme where it is difficult to develop a basis for saying no to any important arguments. Everything is good to do. There is no sense of priority and no procedure for establishing one.

The United States presidency has its power base rooted directly in public opinion - its national constituency. It is therefore subject to enormous fluctuations and lack of stable linkages to its popular base. The Congress is still too decentralized - or atomized, according to some - in its internal power structure to mount a sustained alternative at present. Since the Watergate crisis and Vietnam it has initiated certain efforts to reassert itself, such as the aforementioned reforms in relation to the budget process and in reinvigorating control of its committees by the congressional leadership. But clearly it cannot act as a delimiting force for sustained periods nor as a source of support for the President in meeting the troubling challenges to and tasks of national leadership. The federal courts, too, cannot be considered as a regular source of control against the modern pattern of expanding presidential authority, although they have outlined some of the parameters of abusive power. In the past decade or so, however, almost all decisions against executive decisions have been directed at the lower echelons of the federal bureaucracy.

¹⁰⁵ *Op. cit.*, *supra* note 7, p. 157.

¹⁰⁶ Ranney, Austin, "Candidates, Coalitions, Institutions, and Reforms", Woll,

Most importantly, the political parties “have almost disappeared, except as labels, from national presidential politics”.¹⁰⁶

Party organizations and leaders at all levels have been largely stripped of their once-considerable power to select national convention delegates and deliver them to one candidate or another. Hence no presidential aspirant today bothers much with the party organizations in his drive for the nomination; indeed it may be most effective, as it certainly was for Jimmy Carter in 1974-76, to run for the nomination as the candidate who is not in any way involved with or supported by the “party bosses”.

Everett C. Ladd, Jr.¹⁰⁷ anticipated Theodore Lowi’s diagnosis by seven years when he noted:

We have now pretty much cut the presidency loose from the party . . . Such ties, such supports, such checks - for strong parties can restrain as well as bolster - have been substantially removed. The personal, plebiscitary character of the presidency has been powerfully extended by the party decline.

We have, in sum, a very personalistic and “plebiscitary” presidency needing intermediaries to govern effectively within constitutional limits - intermediaries such as a strong Congress and more nationally disciplined political parties.

For the Mexican President, any “crisis of legitimacy” and accountability would stem from a rather different syndrome. Opposition groups are either co-opted or, if they “refuse to modify their demands or to accommodate themselves or their organization to the system, they are repressed”,¹⁰⁸ Examples of both tactics were given in the last section. The result is monopolization of political power by the PRI and the President’s “revolutionary family.” Even the opposition political parties recognized and expanded in their congressional representation by the election reforms of 1977 (see *supra*, IV. 2. E. g.) do not dare attack the President or his policies directly. Except for the PAN (with 15.7 per cent), none of the five other opposition parties fielding

Peter, ed., *Debating American Government*, Boston, Toronto, Little, Brown, 1986, and *idem*, “The President and His Party”, Woll, Peter, ed., *American Government: readings and Cases*, 9th ed., Boston, Toronto, Little, Brown, 1987, pp. 320-324.

¹⁰⁷ Ladd, Everett Carll, Jr., *Where Have All the Voters Gone: The Fracturing of America’s Political Parties*, New York, W. W. Norton, 1978, p. 76.

¹⁰⁸ Hellman, Judith Adler, *cit.*, p. 163.

presidential candidates could poll more than 3.5 per cent of the popular vote in the 1982 general elections.¹⁰⁹ Such a lack of sustained "loyal opposition" in and out of government prevents a release of political tensions and frustration with the governing party. Thus is posed the greatest danger to political stability in Mexico.

It is only *within* the presidential party that legitimate protest can be vented and the President himself held accountable. The strong "sector" organization of the PRI, disciplined but accommodated from the top down, provides the President with his support mechanisms as well as the limits on his decisional options. As we have shown in Section V above, outside groups representing business and independent worker interests may also influence the process through the popular, labor, and agrarian sectors, through representation (as in the case of commercial groups) in government financial institutions and sub-cabinet appointments, and, to a limited extent, in the broadcast and print media. The uni-party basis of presidential power thus far has served well the cause of Mexican political stability and accountability, but the system contains the seeds of its own destruction.

If the Mexican presidency can adapt to some of the diversity and choice of United States institutions as a means to represent opposition alternatives, so also can the United States learn from the Mexican presidential system. What follows are several proposed reforms to both *limit* and *reinforce* presidential leadership in the United States; *i.e.*, to restore the constitutional balance in the separation of powers principle, but without the necessity of amending the Constitution. Some seem even more persuasive in light of the Mexican presidential experience, and some may also be applied to *correct* abuses of executive power in Mexico. Both kinds of applications will be noted.

1. Each country could benefit from broadening the participation of national parties in the process for selecting presidential candidates. A national primary election should follow a pre-primary party convention at either the state or national level. According to the latter proposal,¹¹⁰ each party would organize a national convention to select two or three candidates favored by the leaders and delegates from provincial party organizations. Then the national executive committee of each party would conduct a national presidential primary to select the final no-

¹⁰⁹ Middlebrook, Kevin J., *op. cit.*, *supra* note 27, p. 22.

¹¹⁰ Per Cronin, Thomas E. and Robert D. Loevy, "Putting the Party 63 as Well as the People in President Picking", Woll, Peter, ed., *Debating American Government*, Boton, Toronto, Little, Brown, 1986, among others.

minee of his party to compete with others in the general election. In Mexico, this could mean a final pool of six presidential candidates besides the PRI nominee (based on the 1982 field). In the United States, the reform would eliminate separate, costly, and often unrepresentative primary elections in some 36 states. This proliferation of the last 20 years has divided the constituent party base for the President and confused the voters. State parties could still organize a system of local "caucuses" and conventions to choose delegates to the pre-primary national convention, and thereby preserve the current value of localized popular input into the process of nominating presidential candidates.

2. To help the electorate identify the leadership and responsibilities of executive power, the President could name the members of his Cabinet prior to the presidential election in November.¹¹¹ Mexico now comes to closer to this practice than the United States, but both could benefit from such a practice in European parliamentary elections.

3. To fortify the Congress as a source of both controlling and supporting presidential programs, a Congressional Budget Committee could be established, with representation from both legislative chambers in the United States and Mexico. This would provide technical expertise and independent informational sources to both national legislatures. In the United States, such a committee might help to end the division and conflict between the two houses on budgetary appropriations.

4. To increase the influence of party leaders in each congressional chamber and broaden their ability to respond to presidential recommendations, convert the power of "veto" of bills now exercised by United States standing committees to the advisory role performed at present by the Mexican committees. This would create congressional committees as "study groups" and put the congressional leadership squarely in the hands of the Speaker and majority leadership of both houses, as authorized by the party "caucuses" in each chamber. As party accountability increases in the House and Senate so also can Congress speak more "with one voice." This enables the President to govern with a stronger parliamentary base, instead of the more fragile and precarious base in public opinion and special interest groups (known as "political action committees" or PACs). The hope of this reform is that deception and manipulation of public opinion will be replaced by open debate of realistic policy alternatives.

¹¹¹ Lowi, Theodore J., *op. cit.*, *supra* note 7, p. 195.