

Evolution of the division of powers through the constitutional documents of independent México**Evolution of the division of powers through the constitutional documents of independent México**

HUIZAR-HUIZAR, Teresita† & MAGALLANES-DE LUNA, Mireya del Rayito

*Universidad de Guadalajara, Centro Universitario del Norte*ID 1st Author: *Teresita, Huizar-Huizar* / ORC ID: 0009-0007-5086-5052, CVU CONAHCYT ID: 1271569ID 1st Co-author: *Mireya del Rayito, Magallanes-de Luna* / ORC ID: 00009-0008-3354-3542, CVU CONAHCYT ID: 1272956

DOI: 10.35429/JSR.2023.24.9.25.32

Received July 30, 2023; Accepted December 30, 2023

Abstract

The purpose of this article is to carry out a search of the antecedents of Mexican Constitutionalism, with a historical perspective, in order to analyze the structure of the division of powers in its current system of application through its governmental hierarchy. From the first constitution of 1824, to the current Mexican Political Constitution of 1917. In the present work a search was made in different academic repositories, such as Google, Scielo and Redalyc. Taking into account the most relevant events that refer to the information found in the publications, which are also related to the research topic, in order to answer the following question: What has been the historical evolution of the division of powers in Mexico? In this way and with the information gathered, a documentary and descriptive research will be developed by means of the historical method, and the results gathered in this research.

Constitutionalism, Governmental, Historical, Political, Constitution, Academic, Evolution, Division of powers**Resumen**

En el presente artículo tiene como finalidad realizar una búsqueda de los antecedentes propios al Constitucionalismo Mexicano, con una perspectiva histórica, a fin de lograr analizar la estructura de la división de poderes en su sistema de aplicación actual mediante su jerarquía gubernamental. Desde la primera constitución de 1824, hasta la actual Constitución Política Mexicana de 1917. En el presente trabajo se realizó una búsqueda en diferentes repositorios académicos, como lo son el Google, Scielo y Redalyc. Teniendo en cuenta los acontecimientos de mayor relevancia que hacen referencia de la información encontrada en las publicaciones, que además tienen relación con el tema de investigación, para dar respuesta a la siguiente pregunta ¿Cuál ha sido la evolución histórica de la división de poderes en México? De esta forma y con la información recabada se desarrollará mediante el método histórico, una investigación de tipo documental, descriptiva, y resultados recabados en la presente investigación.

Constitucionalismo, Gubernamental, Histórico, Político, Constitución, Académico, Evolución, División de poderes

Citation: HUIZAR-HUIZAR, Teresita & MAGALLANES-DE LUNA, Mireya del Rayito. Evolution of the division of powers through the constitutional documents of independent México. *Journal of Social Researches*. 2023. 9-24:25-32.

† Researcher contributing as first author.

Introduction

This research will address the division of powers in independent Mexico, taking into consideration the historical constitutional documents in which the division of powers is addressed, being one of the most important dates of Mexican constitutionalism from the Constitution of 1857, where the way in which power would be divided for its governmental exercise according to the democratic political structure consolidated at that time was established for the first time. The distribution of power was established by means of three bodies, the executive, legislative and judicial, forming a republic with mixed states, with respect to the application of power. For this purpose, a comparative historical analysis will be made of the constitutional legal instruments of the dates 1824, 1857 and 1917, which frame the legal safeguard of the division of powers, as well as the philosophical support of great thinkers such as; John Locke and Charles Louis de Secondat (Montesquieu), who believe that the three great forms of government are complemented by the republic, monarchy and despotism, Montesquieu being the thinker who proposed the theory on the division of powers through three jurisdictional bodies, whose primary objective was to protect the rights of citizens in general and freedom, He was an analytical philosopher about the politics of England, which he took as a model, since that country had a model of divided power through legislative parliament and judicial judges, his idea was also supported by the declaration of the rights of man and the citizen in France in 1789. Its system was implemented in constitutional laws that are analysed from the aforementioned dates, a model that is used today, having importance in our country since it allows in a democratic way a distribution of power that lies in the organs of the state, avoiding the concentration of power in a single individual, thus guaranteeing the autonomy of the state, to provide protection and equality towards the rights of man through the application of the applicable legal norms for each state.

I. Constitution of 1824

Montesquieu, in the theory of the separation of powers of the state, argues that the legal division of the functions of the executive, legislative and judicial powers can limit the arbitrary exercise of power and protect the freedoms and rights of citizens only if it is linked to another principle based on their social distribution:

ISSN: 2414-4835
ECORFAN® All rights reserved.

"In a state, that is, in a society in which there are laws, freedom can only consist in being able to do what one ought to want and in not being obliged to do what one ought not to want"(2003) The struggle for the fundamental rights of man has been latent throughout history, for this the ancestors were looking for ways to create legal standards that could be useful when regulating behaviours as a society and through them to punish what is considered as behaviours that alter the social order in order to cause harm, so through the past generations, who with war confrontations defended and demanded the impartation of justice, from a juridical approach and at a public level, constitutionalism emerges on a trace of political organisation according to the needs of the City-States, to be conceived as the main juridical axis of State organisation, enshrining in it the limits for the excesses of power, for this the Constituent Power.

Constitutionalism, as a legal system, is equivalent to a set of limits and links, not only formal, but also substantial, rigidly imposed on all normative sources by supra-ordinate rules; and, as a theory of Law, to a conception of validity of laws linked not only to the conformity of their forms of production in the procedural rules on their formation, but also to the coherence of their contents with the constitutionally established principles of justice (González, 2018).

Power emanating from the constituent power arises through the autonomy derived from society, through a structural political organisation with the aim of creating the norms to regulate social, political and legal coexistence, thereby giving the Constitutional body the validity for its operation and territorial normative application, which adds, interprets, elaborates and reforms the different legislations of the State.

The original constituent power always remains a fully autonomous power to order and rearrange the basic coexistence of a political society through the Political Constitution, when so decided autonomously by the political body of society, having the freedom to configure this legal order (Nogueira, 2017).

The constitution of 1824 consists of 7 titles and 171 articles through which the existence of the 19 states was recognised, which depended entirely on the Federal District, basically establishing the freedoms under which the country would be governed, freedom enshrined in its first article through which it is acquired from the independence of the Spanish country by configuring itself unique and independent, "acquiring the name of federal constitution of the United Mexican States" the numeral 7 of its content is embodied the structure with which the power is shared, between its representative bodies divided into; legislative, executive and judicial, "Art. The legislative power of the federation is vested in a General Congress. This is divided into two Houses, one of deputies and the other of senators". (Const, 1824) Therefore, in its second section, the form in which it would be represented by means of those elected by the States for two-year periods was described, the fundamental basis for the appointment of representatives being the population, which is why, due to the population census, eighty thousand souls were taken as a numerical reference for the appointment of a deputy by unanimity, In turn, it will be up to each state, by means of the established census, to determine in the federation the way in which the chamber of deputies will be renewed after a decade, and in each of the states, in the same way, the number of deputies will be chosen to integrate the current congress. For the territories that are composed of a number greater than forty thousand inhabitants, it will correspond to them to participate in the appointment of a proprietary deputy and a substitute deputy, to represent them with voice and vote at the time of meeting for the confirmation of laws and decrees. And for those territories that do not reach the required number of inhabitants, it will be given the autonomy to name a substitute and an owner to represent them in all areas and matters, the dates for all the aforementioned elections will correspond to the first Sunday of the month of October prior to the renewal of the chamber, by means of direct elections. Article 123 of Title V, mentions the distribution of power by the body in which the function will fall, this being the Supreme Court of Justice of the Nation, also the circuit courts and the district courts. Being the chamber in charge of making the corresponding revision of the lists to enumerate the votes, the way in which power would be shared in Mexico from this first constitution onwards was also organised.

II. Constitution of 1824

The 1824 Constitution of Mexico initiated a division of powers between the Legislative, Executive and Judiciary, with mechanisms to avoid concentration of power and to guarantee the autonomy of the States in a federal system. (Const, 1824).

1. Legislative branch:

- The Constitution of 1824 founded a General Congress composed of two chambers: the Chamber of Deputies and the Chamber of Senators. The former represented the interests of the people, while the latter represented the interests of the states.
- The main function of the legislative branch was to make laws and important decisions for the country.
- The division into two chambers sought to balance legislative power between the states and the people, avoiding a domination of one over the other.

2. Executive power:

- Executive power rested with a single individual, the President of the Republic. The president was elected for a limited term and could not be re-elected consecutively.
- The president was responsible for executing and enforcing the laws passed by Congress and heading the country's armed forces.
- It sought to maintain a balance between the executive and legislative branches, avoiding excessive concentration of power in one person.

3. The judiciary:

- The Judicial Branch was in charge of the Supreme Court of Justice, which was responsible for interpreting and applying the laws.

- The Supreme Court had the power to resolve conflicts between states, cases to which the Federation was a party, and to try federal public officials for crimes committed in the exercise of their functions.
- This separation of judicial powers ensured the independence of the judiciary and its ability to act as a counterbalance to the other two branches.

III. Constitution of 1857

The evolution of society continued and with the help of written rules, from the date mentioned above, the structure that would govern society as a result of the written legal rules was consolidated. In 1857, a reform of the structure of power became necessary, establishing in its first article the recognition of the Mexican people of the rights of man as the representative of legal institutions, to make the respective declaration on the legislation in the due respect and support of the guarantees, also specifying in its second title, article 39, the aspects related to the division of powers, granting the Mexican people the maximum National Sovereignty under a form of public power originally emanating from it, granting the people the firm right to modify at any time the form of governmental constitution. Thus, against precedents, practices and even convictions, the constituent deputies established in the text of 1857 a presidential system - which did not cease to be so because of the ministerial endorsement, nor because of the requirement for ministers to appear before Congress - because the Constitution of 1824, whose articles it copied, had been presidential (Pantoja, 2008). (Pantoja, 2008).

Article 40 will refer to the form in which it will be constituted as a representative Republic with autonomous democracy, made up of sovereign and free states in accordance with the regime under which they are governed, and united by the Federation that established them, to continue, Article 41 will support the exercise of the people's sovereignty represented by the powers of the Union in cases of competence and of the States regarding internal regimes, and once formed, to govern with autonomy and democracy according to the legal bases already established in accordance with the current territorial composition without contradicting the federal pact.

ISSN: 2414-4835
ECORFAN® All rights reserved.

Thus, in its Title III, it establishes the division of powers, where it states that "Article 50.- The supreme power of the federation is divided for its exercise into legislative, executive and judicial powers. Two or more of these powers may never be united in one person or corporation, nor may the legislative power be deposited in one individual" (Const, 1857). It establishes the principles for the organisation of the Mexican states, emphasising the republican, representative and popular form of government, and ensuring that state laws respect individual guarantees and the Federal Constitution. This article contributed to the consolidation of a democratic federal system in Mexico.

Consequently, it breaks down the integration of each of the powers that would make up the legislative, executive and judicial powers, in the integration of the legislative power it describes that for the exercise of its functions an assembly is created which will be called the Congress of the Union, composed of two chambers: the Chamber of Deputies and the Senate, this division seeks to balance the representation between the population and the States. The Chamber of Deputies is the lower chamber and directly represents the population. Deputies are elected by popular vote and their number is determined by the population of each state. The Senate is the upper chamber and represents the states; each state sends an equal number of senators, regardless of its population, which legitimises that the states will have an equal voice in Congress.

- **Form of Government:** Mexican states must have a republican form of government, meaning that power emanates from the people and is exercised through representatives elected by popular vote. This reflects the 1857 Constitution's commitment to the democratic system.
- **Representative and Popular:** In addition to being republican, state governments must be representative and popular. This implies that citizens should be able to elect their representatives and participate in the political process of their states.

- Limitations on State Laws: The article mandates an important limitation on state legislation by stating that state laws cannot be contrary to individual guarantees and the provisions of the Federal Constitution. This ensures that the fundamental rights of citizens, established in the 1857 Constitution, are protected in all states of the Federation and prevents states from adopting laws that violate these rights.

IV. Constitution of 1917

Promulgated and published in the Official Gazette of the Federation on 5 February 1917, its main objective in Article 2 is the indivisibility of the Mexican Republic, as well as the multicultural self-determination of the indigenous peoples that make it up, the conservation of their institutional, economic, cultural, social and political customs, which is the structure under which Mexican society must be governed, the autonomy it has acquired as a federal republic, for which it will be an autonomous territory to decide on its coexistence in the aforementioned fields, It will be autonomous and independent to regulate all the conflicts that the nation demands to regulate through the written legal norm, making the election according to paragraph A of its third paragraph on the practice of procedure in a traditional way for the election of the authorities that will represent it in all its forms of government, making relevant that men and women will be able to exercise their right to vote, and in the same way to access the performance of public positions as long as the federal pacts before the Sovereignty of the State are respected, In this way, by means of political-electoral elections, the municipal authorities would be elected who would be responsible for leading the people.

Unlike the liberal Constitution of 1857, which was permeated by an iusnaturalist doctrine, the reforms approved in 1917 directly sought to solve concrete political problems. From this perspective, I believe that a detailed historical analysis of why the issues of the social question, government intervention in the economy and the strengthening of the executive branch were raised, and how the constituents made decisions in this regard, allows us to demonstrate that the Mexican constituent of 1917 was essentially pragmatic (Marván, 2018).

Chapter III article 80 will be in charge of regulating the Executive power, depositing in a single person who will be called President of the United Mexican States, who will be elected through direct elections regulated by the electoral law, and also article 82 refers to the requirements to occupy this position, one of the main ones is to be Mexican by birth, be 35 years old, reside in the country, taking possession of his mandate on October 1st and lasting in office for six years, and in the subsequent articles deriving the obligations related to the president.

In Chapter II, Article 51 highlights the jurisdictional organ on which the legislative elaboration will fall, this being the General Congress divided into two chambers, one of deputies and the other of senators. Article 52 also mentions that 300 deputies elected by unanimous vote, in addition to 200 deputies, will be in charge of drafting regulations in accordance with the needs of the territorial environment in which they will be applied.

Chapter IV on judicial power, regulated by Article 94 of Chapter IV, which will be deposited in a specific body that will be called the Supreme Court of Justice of the nation, as well as an Electoral Court, and Regional Plenary Courts, in addition to Collegiate Circuit Courts and District Courts. The Supreme Court of Justice will be composed of eleven members, both ministers and ministers, and its function will be divided into plenary or chambers, in a public manner. (Const, 2023).

1. Executive Power: The figure of the President of the Republic as the head of the Executive Power is maintained. He is granted broad powers and responsibilities, including the direction of public administration and the ability to propose laws. However, it limits his immediate re-election and his presidential term to a maximum of six years.

2. Legislative branch: The legislative branch is composed of a bicameral Congress of the Union, consisting of a Chamber of Deputies and a Senate. The Constitution institutes the functions and responsibilities of these two chambers and creates procedures for the creation and approval of laws. In addition, proportional representation is established in the Chamber of Deputies, which seeks to balance power among different political parties.
3. Judicial branch: Mexico's judicial branch is represented by the Supreme Court of Justice of the Nation (SCJN) and other courts. The Constitution builds the independence of the judiciary and grants it the power to interpret laws and guarantee the constitutionality of government actions. In addition, the amparo system is created as a mechanism to protect individual rights and the Constitution.

The compilation and mention of events prior to the formation of the Constituent Assembly is part of the panorama of the crisis and difficulty that the last years of the Mexican Revolution represented to form the so-called "national unity" and thus put an end to the failure of the previous interim governments in order to consolidate the "struggle for democracy" expressed in ink and paper, also called the Constitution of 1917, which is still in force (Hernández, 2018).

It provides for a system of government based on the division of powers with the aim of preventing the concentration of power and protecting individual rights. Through the separation of powers and other checks and balances, the Constitution seeks to guarantee political stability and respect for the law in the country.

Methodology to be developed

As a methodology for this article, the deductive historical method is used, which has been used by historians with the aim of analysing the most relevant past events, derived from all those ancient instruments of the period or testimonies that support the study of the subject to be developed, its main objective is based on the discovery of the historical background, from a social science perspective, in an analytical vision, in addition to explaining things from how they were carried out. The main sources for its implementation through research are concatenated according to the step to follow, related to the information that is elaborated according to the time of study by the documents found in government institutions, libraries belonging to the state derived from works carried out by philosophers, archaeologists and sociologists. By means of this method the work of analysis will be carried out on the basis of the theme of the evolution of the division of powers; executive, legislative and judicial.

Results

Regarding the historical descriptive-documental research, the results obtained in the first constitution of 1824 of independent Mexico, correspond to a Constitutional document elaborated at that time with the purpose of regulating the Mexican nation, endowed with Juridical and Political Character it was established the federal political system by means of which the social federation and the declaration of the independence of Mexico would be regulated. It was installed in Mexican America as a primordial pact in which the division of the 19 States and 5 Territories would be determined, giving autonomy to each State to elect its ruler as well as its congress, this would be done through the division of powers, executive in the election of the people, represented in a single individual to represent him, called president, legislative attributed to senators and deputies, and judicial would be in charge of the supreme court of justice of the nation.

Consequently, the constitution of 1857 was composed of 8 titles and 120 articles giving protection to the fundamental rights of man, a body that also subdivided the public and political power into three, executive, legislative and judicial, which in relation to the previous one, keeps and preserves the same structural line with respect to the powers it subdivides, the president being the person invested by the executive power in charge of governing a nation, the legislative power would be represented by the Congress of the Union, the judicial power would be represented by the judges and magistrates who should enforce the legislation through the application of justice, only with a legal evolution in its content applicable to society.

In the current constitution of 1917, all of the above is perfected and continues with the same political and legal structure through the bodies in charge of imparting justice, which due to the increase in the population has made it necessary to increase the number of spaces and people so that the judicial power can apply autonomy through a hierarchical order that has been established through the State courts that hear matters in the different areas, In addition, and thus following the same structural line, the executive power has the responsibility to govern the country, it is attributed the powers to implement and enforce the laws approved by the legislative power, which implies supervising the application of public policies, the regulation of society and the administration of public resources. The legislative branch is responsible for drafting laws in accordance with the needs of the territorial space to which they will be applied, in order to regulate the conduct of society in accordance with its needs, It is up to him to enforce it by means of punishment in accordance with the crime committed by the persons who resort to access to justice for its enforcement and in this order of ideas I base the hierarchical, political, and legal structural order, it is concluded, the relative to the division of powers that through the years had the same structural design applicable in society, only with a representative evolution for society.

The task is not easy because it is a broad, complex, intense, exhausting constitutional life, with many advances and setbacks, with clear models, but confronted in an agonistic way. A constitutional life that is a reflection of the convulsive political, social, cultural and economic life underlying the 19th and 20th centuries (Martínez, 2017).

ISSN: 2414-4835
ECORFAN® All rights reserved.

Conclusions

The result obtained from the present work on the way in which political powers are divided from the first constitutional period, taking as a model the thought of the philosopher Montesquieu, towards the way of dividing political power, through elected representatives, in a democratic way, in order to govern the state through the application of applicable written legal norms, this thought was first embodied in the Political Constitution of the United Mexican States of 1824, where for the first time in history the power was shared, being this in executive, legislative and judicial, with the direct participation of the people through the constituent power in order to divide and be represented in two chambers, one of deputies and another of senators, the result obtained from this work about the way in which the political powers are divided since the first constitutional period. It continues its evolution of political democracy and a new form of government was gradually adapted, but conserving the essence of the first constitution by carrying out the form of government through three different governmental bodies and reforming itself to continue consolidating itself now in the constitution of 1824. For the constitution of 1917 the evolution and the proposed way of dividing the power is the one that is practiced until nowadays in a political way with elections regulated by the INE who is in charge of watching over the amount of the votes cast by the people, delegating the function of representing and governing to the president with the enrobing of the executive. As well as the legislature represented by the chamber of senators and deputies, the elaboration of the law that will later be applied by the judiciary which is made up of judges and magistrates specialised in the matter. It should be noted that these powers may differ depending on the constitution and laws of each state, depending on the time that elapses between each constitution, and due to political or constitutional changes, the division of powers and the performance of particular duties may change over time.

Today, the separation of powers is crucial because it is necessary for the maintenance of democracy, the defence of human rights and the efficient functioning of all governments. Its importance cannot be underestimated.

HUIZAR-HUIZAR, Teresita & MAGALLANES-DE LUNA, Mireya del Rayito. Evolution of the division of powers through the constitutional documents of independent México. *Journal of Social Researches*. 2023

For a number of fundamental reasons that underline its importance in today's world, the separation of powers remains relevant. The separation of powers serves as a system of checks and balances to prevent the concentration of absolute power in the hands of one person or group. In a society where the abuse of power can have disastrous effects on the freedom and rights of citizens, this is especially necessary. There will always be independent organisations charged with defending and enforcing human rights thanks to the separation of powers. The judiciary and legislature have the capacity to oversee the operations of the executive and ultimately ensure that powers and their division are respected. The judiciary and legislature have the capacity to oversee the operations of the executive and ultimately to ensure that the fundamental rights of individuals are respected. Many democracies rely heavily on the separation of powers to maintain political stability. It ensures that the transfer of power is peaceful and democratic and helps prevent coups d'état. In contrast, political conflicts, social movements and economic changes have had an impact on the historical evolution of Mexico's power structure, which has been characterised by periods of advance and retreat. Despite the difficulties, Mexico's political system continues to be based on the separation of powers as a fundamental principle, although there is still room for improvement in terms of how well the different powers complement each other and how independent they are of each other.

References

1. Constitución Federal de los Estados Unidos Mexicanos [Const]. (1857, 5 de febrero). Art.3 [Titulo 352 III]. Diario Oficial. Obtenido de https://www.diputados.gob.mx/biblioteca/bibdig/const_mex/const_1857.pdf
2. Constitución Federal de los Estados Unidos Mexicanos [Const]. (1824, 4 de Octubre). Art.7[Titulo]. Congreso General Constituyente. Obtenido de <http://www.ordenjuridico.gob.mx/Constitucion/1824B.pdf>
3. Constitución Política de los Estados Unidos Mexicanos [Const]. (2023, 6 de junio). Art. 94 [CapituloIV]. Diario Oficial de la Federación. Obtenido de <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>
4. González, M. M. (2018). El significado de Constitución. Breve revisión del concepto y de su relevancia a la luz del principialismo y el garantismo. UAM, Unidad Iztapalapa, División de Ciencias Sociales y Humanidades, Departamento de Sociología, 14(1), 43-80. 363
5. Hernández, I. A. (2018). Los constituyentes y la Constitución de 1917. Universidad Autónoma Metropolitana, 50, 267-270. Obtenido de <https://www.redalyc.org/journal/267/26757552011/html/>.
6. Martínez, M. F. (2017). Happy (Mexican) Constitución. Historia Constitucional (18). Obtenido de <https://www.redalyc.org/pdf/2590/259052486015.pdf> 368.
7. Marván, L. I. (2018). La revolución mexicana en la Constitución de 1917. Revista Uruguaya de 369 Ciencia Política, 27(1). doi:10.26851/RUCP.27.7.
8. Montesquieu, C. (2003). Del Espíritu de Las Leyes. Madrid: Alianza.
9. Nogueira, A. H. (2017). PODER CONSTITUYENTE, REFORMA DE LA CONSTITUCIÓN Y 372 CONTROL. Cuestiones Constitucionales (36), 327-349. Obtenido de <https://www.redalyc.org/pdf/885/88552786012.pdf>.
10. Pantoja, M. D. (2008). LA CONSTITUCIÓN DE 1857 Y SU INTERLUDIO 375 PARLAMENTARIO. Historia mexicana, LVII (4), 1045-1106. Obtenido de 376 <https://www.redalyc.org/articulo.oa?id=60011173002>.