

Chapter 3

Human Rights in Comparative Constitutional Law, Mexico-Usa

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Abstract

Human rights have gained importance in recent times. In Mexico, they have become a core issue, and in the United States, they have always been taken into account. The influence of these two countries is unquestionable, given their proximity, economic interests, shared culture, and history. The US Amendments are contrasted with the Chapter on Human Rights and Guarantees of the Political Constitution of the United Mexican States (CPEUM, 2025), seeking similarities and parallels. Their context is studied from the perspective of comparative constitutional law, their systems of exercising power, and their constitutional principles.

Preliminary Note:

This paper provides an overview of the legal and historical influence that the United States and Mexico have exerted on each other's political development due to their geographic proximity. Individuals who engage with both environments should recognize the advantages of this interaction and not be ashamed of their origins, for in many cases, they did not cross the border; the border crossed them.

THE SOCIO-LEGAL AND CULTURAL INFLUENCE OF MEXICO AND THE UNITED STATES ON EACH OTHER

The official name of Mexico is the “United Mexican States,” (Estados Unidos Mexicanos) which gives some idea of the level of influence between these two countries. Both nations are located in the northern part of the Americas, and as the Mexican government sums it up:

La palabra México proviene del náhuatl Mēxihco, que significa el ombligo de la luna. El nombre oficial es Estados Unidos Mexicanos. Es un país situado en la parte meridional de América del Norte, y colinda al norte con Estados Unidos, al sureste con Belice y Guatemala, al oriente con el Golfo de México y el Mar Caribe, y

al poniente con el Océano Pacífico. Es el décimo cuarto país más extenso del mundo, con una superficie cercana a los 2 millones de kilómetros cuadrados. Es el undécimo país más poblado del mundo, con una población de aproximadamente 118 millones de habitantes. La lengua materna es el español, que convive junto con 67 lenguas indígenas. (Embajada de México en República Dominicana, 2013)²

It should be noted that, as of the latest census in 2020, Mexico's population exceeds 126,014,024 people (INEGI, 2021), with an average age of 29. The country continues to rank eleventh globally by population, with women comprising 51.2% and men 48.8% of the total. The country is located immediately south of the United States, and historically, even from the time it was the Viceroyalty of New Spain and after Mexico's independence, the territory was subject to significant changes, notably the loss of 55% of its land through the Treaty of Guadalupe-Hidalgo on February 2, 1848, following the Mexican-American War. Today, economic ties are defined by the United States-Mexico-Canada Agreement (USMCA), a successor to the North American Free Trade Agreement (NAFTA), which came into force in 1994 and was ratified in 2019. As a free trade agreement, the USMCA has facilitated significant economic integration throughout the region by enabling commerce between the participating countries.

Anáhuac originally referred to the Valley of Mexico, but later came to signify a single country. Different native nations formed an alliance with the advancing Spanish, leading to the establishment of various towns and cities. This is why Spanish is spoken alongside 67 indigenous languages. Authors such as Francisco Javier Clavijero (1981), Joseph

² The official name of Mexico is the 'United Mexican States,' (Estados Unidos Mexicanos) which gives some idea of the level of influence between these two countries. Both nations are located in the northern part of the American Continent, and as the Mexican government sums it up, Mexico's name, derived from the Nahuatl word *Mēxihco*, means 'the navel of the moon.' Mexico, located in the southern part of North America, is the 14th largest country in the world, with a surface area of approximately two million square kilometers. It is also the 11th most populated country, with about 118 million inhabitants. While Spanish is the mother tongue, it coexists with 67 indigenous languages (Embajada de México en República Dominicana, 2013)

H. L. Schlarman (2014), and Juan Miguel Zunzunegui (2023) agree that the Spaniards, led by Hernán Cortés, served as a catalyst for peoples like the Tlaxcaltecs and Texcocans, among others, to unite against the Aztecs. The Aztecs had oppressed these groups and engaged in human sacrifices and ritual cannibalism. The Aztecs were defeated at Tlatelolco on August 13, 1521 (Schlarman, 2014, p. 83). However, this defeat was limited to the Aztec people alone, as the remaining indigenous groups were not conquered; rather, they forged a pact of equals with the Spanish under specific conditions. The myth that the conquest was a genocide and that the Spanish cruelly imposed themselves upon and annihilated the indigenous population dates back to the era of Mexican independence (Zunzunegui, 2023, pp. 93-95). Instead, it was a meeting of two worlds, and in forming and achieving independence from Spain, Mexico embodies the best of both.

In other words, Mexican culture is a synthesis of the best of both Hispanic traditions and the Native American cultures established in what are now Mexico and the United States. Returning to the topic of its official name, Mexico was inspired by the nascent republic to the north, which at the time presented an uncommon political model by adopting a form of government other than a monarchy. In fact, Mexico began its independent journey as a constitutional monarchy under the reign of Agustín I from 1821 to 1823 (Krauze, 2014). However, Agustín I was forced to abdicate, and the form of government was reconsidered, leading to the adoption of a federal republic modeled after the United States. The Constituent Congress of 1823–1824 subsequently promulgated a Federal Constitution on October 3, 1824.

Burgoa (2008) notes that this constitution was deficient in terms of individual guarantees, a situation highlighted by the 1814 Constitution of Apatzingán. Although that constitution was inoperable, it served as an ideological foundation for the rights sought by citizens at the time. This deficiency can be verified by a review of the 1824 Federal Constitution, which lacks a dogmatic section or any chapter recognizing or granting rights.

The first Mexican Constitution, promulgated on October 3, 1824, has several key features. It was the first time Mexico adopted a federal,

democratic, and republican form of government. The debates leading up to its creation were a clash between federalists and centralists. The federalist faction included Miguel Ramos Arizpe, Lorenzo de Zavala, Valentín Gómez Farías, Juan Bautista Morales, Manuel Crescencio Rejón, and José María Covarrubias. Opposing them were centralists such as Carlos María de Bustamante, Rafael Mangüino, and Fray Servando Teresa de Mier (Fix-Zamudio, 2012, p. 83).

The conception of this written constitution was notably influenced by the U.S. Constitution, which was promulgated in 1787 and came into force in 1789, thirty-five years earlier (Monroy, 2006). This exerted considerable influence on one of the factions debating the Mexican constitution. The discussions had evolved from a fundamental choice between a monarchy and a republic. Once the republican path was chosen, the debate shifted to a federal versus a central republic, with federalism ultimately prevailing.

The Federal Constitution of 1857 is a crucial precursor to the current Mexican Constitution. To achieve it, a series of constitutional challenges had to be overcome on the battlefield in civil wars, which left ruling regimes fragile and susceptible to foreign invasions.

The principles enshrined in the current Mexican Constitution—officially titled the Political Constitution of the United Mexican States—are:

- The Principle of Supremacy of the Constitution
- The Principle of Separation of Powers
- The Principle of Separation of Church and State
- The Principle of Reformability of the Constitution
- The Principle of Equality
- The Principle of Legality
- The Principle of Inviolability

The Principles of Constitutional Interpretation (Conforming Interpretation, Pro-persona, Universality, Indivisibility and Interdependence, and Progressiveness). (See Arteaga, 2017). The current Mexican Constitution, enacted in 1917 and based on its 1857 predecessor, includes a dogmatic section that allocates rights to individuals. Since June 2011, human rights have been officially recognized, and the mechanisms for

their defense have been granted the status of constitutional guarantees. (Arteaga, 2017).

The Constitution of the United States of America is widely considered the longest-surviving constitution in force, surpassing any other fundamental law in the world (Fix-Zamudio, 2012, p. 332). It emerged after the Thirteen Colonies gained independence from the British Empire. This historical link with the British may explain the creation of this text, which has been so relevant to political life not only in the United States but worldwide, as it marked a historical turning point by establishing a mechanism for limiting power.

When the Thirteen English Colonies separated, they initially recognized themselves as independent states. However, it was the expediency of the time that led them to create a federation and, consequently, a single country. This choice accounts for the autonomy of each federal entity and its internal regulations, as Americans seek a constitutional balance, which...

...tiene dos ejes fundamentales, siendo el primero que la doctrina de la Federación se limitó a recoger las grandes líneas de la intervención inglesa en las colonias pues Inglaterra se limitaba a obtener impuestos del comercio intercontinental. El Segundo eje es el equilibrio mediante el establecimiento de dos jurisdicciones. Conclusión de este doble eje es la doctrina del “control constitucional” que consiste en distinguir los clásicos tres poderes enumerados en los tres primeros artículos de la Constitución: Legislativo, Ejecutivo y Judicial; y enseguida diferenciar dos jurisdicciones, una central y otra local. (Monroy, 2006, p. 188)³

Fix-Zamudio (2012) argues that the initial part of the U.S. Constitution implicitly establishes not only the principle of separation of powers but also the system of “checks and balances.” This system, as he describes

³ “...has two fundamental axes, the first being that the doctrine of the Federation was limited to outlining the broad strokes of English intervention in the colonies, as England limited itself to collecting taxes on intercontinental trade. The second axis is balance through the establishment of two jurisdictions.

The conclusion of this dual axis is the doctrine of “constitutional control,” which consists of distinguishing the classic three powers listed in the first three articles of

it, is “...a delicate and complex mechanism of mutual controls, in which the organs of government have to neutralize each other to enable the government of laws and not of men.” (Fix-Zamudio, 2012, p. 336).

As Montesquieu famously stated, “power should control power.” Thus, in the American system, the three branches of government serve as counterbalances to one another, while the Federation counterbalances local power, and local power, in turn, acts as a check on the Federation.

This is an interesting contrast, as Mexican constitutional doctrine establishes a similar system. In practice, however, the federation consistently prevails over the local level. In the United States, a careful constitutional balance of power is sought, which explains the federal executive branch's presidential election system. In Mexico, the system is based on direct popular vote, meaning the candidate who secures the most votes wins. The United States, in contrast, uses an indirect voting system—the Electoral College—to achieve a balance in which states with the largest populations do not completely dictate the outcome for the rest. Notably, elections in the U.S. are organized by the individual states, so there is no federal entity comparable to Mexico's Instituto Nacional Electoral (National Electoral Institute), known as the INE.

After the candidates are chosen by each party through primary elections and a national convention, the public votes for the President of the United States. This general election is not based on a national popular vote; rather, it's conducted through a system in which each state has a specific number of electors. Professor Armando Soto Flores (2013) explains this mechanism, calling it the Electoral College System. Article 2 of the U.S. Constitution mandates that each state must appoint a number of electors equal to its combined number of senators and members of the House of Representatives. These electors collectively form the Electoral College. Since every state has two senators and at least one member of the House of Representatives, the minimum number of electors per state is three.

The number of electors a state is allocated is dependent on its population, which is measured every 10 years through a national census. While

the Constitution: Legislative, Executive, and Judicial; and then differentiating between two jurisdictions, one central and one local.” (Monroy, 2006, p. 188)”

citizens vote for a ticket consisting of a president and vice president, each state is assigned a number of electoral votes equal to the sum of its representatives and senators. This system operates on the principle that the party that wins the popular vote in a state—whether by one vote or ten million—wins all of that state's electoral votes. This practice contributes to the two-party system. Consequently, the presidential election is won by the ticket that obtains a majority of the country's electoral votes. As of this writing, there is a total of 538 electoral votes (100 senators and 438 representatives), so a candidate must secure at least 270 electoral votes to win (Soto Flores, 2013, pp. 204-205). The principle of checks and balances is evident here, as this system allows a smaller state to be decisive in the election, preventing states with larger populations from unilaterally imposing their will.

In addition to the model of checks and balances, the U.S. system also operates on the model of implied powers, a concept not entirely unfamiliar to Mexican constitutionalism. This principle dictates that any power not explicitly delegated to the Federation is understood to be reserved for the states. As Koontz and Gable (1976, as cited in López Monroy, 2023) state, “Powers that the Constitution does not delegate to the United States or prohibit the states from exercising are reserved to the states respectively or to the people.” A similar principle is enshrined in the Mexican Constitution under Article 124, which states: “Powers not expressly granted by this Constitution to federal officials are understood to be reserved to the states or to Mexico City, within the scope of their respective competences” (CPEUM, 2025, Art. 124).

However, the effects on the US Constitution give rise to a series of powers that are worth mentioning. The powers delegated to the Federation under the terms of Section 8 of Article I of the US Constitution (s/f), as described by José de Jesús López Monroy (2006), are listed below:

1. Poder exigir impuestos y hacer gastos
2. Poder de regular el comercio internacional e interestatal
3. Poder de contraer empréstitos
4. Acuñación de moneda.
5. Fijación de la norma de pesas y medidas
6. Establecimiento de las oficinas de correos

7. Poder declarar la guerra
8. Mantenimiento de un ejército y una flota
9. Garantizar las patentes y derechos de autor
10. Establecimiento de Tribunales Inferiores
11. Dirección de las relaciones con los países extranjeros
12. Poder de dictar las leyes destinadas a hacer efectivas las anteriores facultades. (p.192-193)⁴

The author (López Monroy, 2006) then mentions that there are other implicit powers and lists the following:

1. El poder de formar bancos que surgen en virtud del poder de exigir impuestos, eso regula el comercio y hacer empréstitos.
2. El poder de ayudar y regular la agricultura en virtud del poder de exigir impuestos y hacer gastos.
3. El poder de emplear dinero en carreteras, escuelas, sanidad, seguros, en virtud de los poderes sobre impuestos y comercio.
4. Poder de regular los salarios, horarios y relaciones laborales en virtud del poder de comercio.
5. El Poder de producir efectos y venderlos en virtud de los poderes de comercio y de guerra (se entiende en las épocas de conflictos bélicos). (p. 193)⁵

⁴ The power to levy taxes and incur expenses

The power to regulate international and interstate commerce

The power to borrow money

The power to coin money

The power to establish standards of weights and measures

The power to establish post offices

The power to declare war

Maintaining an army and navy

Guaranteeing patents and copyrights

Establishing lower courts

Conducting relations with foreign countries

Power to enact laws to give effect to the foregoing powers. (López Monroy, 2006, pp. 192-193)

⁵ The power to form banks arising from the power to levy taxes, which regulates trade and borrowing.

The power to assist and regulate agriculture by virtue of the power to levy taxes and make expenditures.

In this context, it is worth noting the contrast in labor law. While the Mexican Constitution's Article 123 expressly grants the federal government the power to issue regulatory laws (CPEUM, 2025, Art. 123), the U.S. system relies on a different approach. The way these powers are established and applied by the courts—which rely on judicial precedents as their primary source of law—is a key distinction. This reliance on precedents partly explains why there have been significantly fewer amendments to the U.S. Constitution compared to the Mexican Constitution.

With regard to the powers reserved to the states, the following express powers are established (López Monroy, 2006):

1. Regular el comercio intraestatal
2. El poder de sanidad, seguridad y moralidad (policy power)
3. Poder de propiedad puesto que no se concibe la existencia de un estado si no tiene un territorio
4. El poder de dominio eminente. (P.193 y194)⁶

In this vein, states derive certain powers, some of which are delegated to them on an exceptional basis. This includes the power to organize elections, which are conducted by the states and, for the compilation of results, by the Electoral College, as mentioned in previous paragraphs. Furthermore, there are concurrent powers shared by both federal and state governments. The general rule for these powers is that even when some are exercised by the federal government, they do not become exclusive unless there is an express transfer of federal predominance. Therefore, the remaining powers can be exercised by the local government as long as they do not interfere with the exercise of central power. These concurrent

The power to spend money on roads, schools, health care, and insurance by virtue of the powers over taxation and trade.

The power to regulate wages, working hours, and labor relations by virtue of the power of trade.

The power to produce goods and sell them by virtue of the powers of trade and war (understood to be in times of armed conflict). (López Monroy, 2006, p.193)

⁶ Regulate interstate commerce

The power of health, safety, and morality (policy power)

Power of ownership, since the existence of a state is inconceivable without territory

The power of eminent domain. (P.193 - 194)

powers include the authority to levy taxes, borrow money, create banks, and regulate bankruptcy proceedings and economic activities.

Therefore, the powers emanating from the Bill of Rights, which is set forth in the first ten amendments, are prohibited for the states, as established in Section 10 of Article 1 of the United States Constitution (undated), which states:

Ningún Estado: Celebrará tratados, alianzas o confederación algunos; Otorgará patentes de corso y represalia; acuñará moneda; emitirá papel moneda; legalizará cualquier moneda distinta al oro y a la plata como medio para el pago de deudas; aprobará decretos que afecten a persona alguna en sus derechos sin un juicio previo, expedirá leyes ex post facto o cualquier ley que menoscabe las obligaciones contractuales; u otorgará títulos nobiliarios.

Ningún Estado, sin el consentimiento del Congreso establecerá impuesto o arancel alguno en importaciones, salvo los que sean absolutamente necesarios para aplicar sus leyes de inspección; y el producto neto de todos los aranceles y derechos, establecidos por cualquier Estado sobre las importaciones o exportaciones, quedará a disposición de la Tesorería de los Estados Unidos; y dichas leyes estarán sujetas a la revisión y control del Congreso. Ningún Estado podrá, sin consentimiento del Congreso, establecer arancel por tonelaje, mantener tropas o navíos de guerra en tiempo de paz, celebrar tratados o convenios con otro Estado, o con una potencia extranjera, o declarar la guerra, a menos que sea invadido, o que esté en peligro inminente que no admita demora. (p. 25)⁷

⁷ No State: Shall enter into any treaties, alliances, or confederations; Grant letters of marque and reprisal; coin money; issue paper money; legalize any currency other than gold and silver as a means of payment for debts; pass decrees affecting the rights of any person without a prior trial; issue ex post facto laws or any laws that undermine contractual obligations; or grant titles of nobility.

No State shall, without the consent of Congress, lay any tax or duty on imports, except such as shall be absolutely necessary for the enforcement of its inspection laws; and the net proceeds of all duties and taxes laid by any State on imports or exports shall be vested in the Treasury of the United States; and such laws shall be subject to the review and control of Congress.

No State shall, without the consent of Congress, lay any duty on goods imported from another State, maintain troops or warships in time of peace, enter into treaties or

On that understanding, states or local governments are prohibited from exercising powers that belong to the central government, which is the entity responsible for minting currency and conducting foreign policy. If a local government were to do so, it would be encroaching on the central government's sphere of action. The federal or central government is prohibited from taking life, liberty, or property without due process under common law; acquiring private property without due compensation to the previous owners; depriving individuals of the rights enshrined in the United States Constitution; it is prohibited from taxing exports, imposing indirect taxes that are not uniform, setting taxes that are not proportional to the population, and enacting laws with retroactive effect (López Monroy, 2006, p. 194-195).

The Political Constitution of the United Mexican States and the Constitution of the United States of America are both foundational documents that enshrine the principle of separation of powers. As noted previously, they also uphold the principle of constitutional supremacy. However, the Mexican Constitution incorporates six additional principles of constitutional interpretation. While both constitutions establish the principle of checks and balances, Mexico has historically practiced a more cautious federalism, with broad powers reserved for the central government. In recent years, a key reform has strengthened the judiciary in Mexico, allowing it to act as a more independent counterweight to the other two branches of government. This judicial reform has even introduced mechanisms that permit individuals to question the performance of popularly elected judges.

Both are rigid constitutions, and the principle of reformability is established by prescribing a specific procedure for constitutional amendment that is distinct from the legislative process. The principle of inviolability is explicitly established in Article 136 of the Mexican Constitution. In the United States Constitution, this principle, while not explicit, is implicitly understood through the application of Constitutional Supremacy and the provisions of the *Marbury v. Madison* precedent.

agreements with another State or foreign power, or declare war, unless it is invaded or is in imminent danger that cannot be delayed.

Human Rights And Amendments In The Constitutions Of The United States And Mexico

In the previous section, we looked at characteristic aspects of the US and Mexican constitutions, mentioning the models and principles that guide both constitutions, which are not so different in conceptual terms. Throughout the development of Mexican constitutionalism, the first constitution did not have a specific section to grant or recognize the fundamental rights of the governed. Burgoa (2008) makes this observation in the federal constitution of 1824, a situation that was corrected by the legislature in the supreme centralist law of 1836, called the Seven Constitutional Laws, which did include a section for Mexican citizens, but this instrument did not gain much traction after the triumph of federalism following the war with the United States. The Constitution of 1857 “not only adopts a frankly individualistic position in the terms already noted, but also establishes liberalism as the regime between the State and the governed.” (Burgoa, 2008, p.120). On the subject of individual rights, this constitution contains the same rights as the current federal constitution of Mexico, as in the case of the control of legality regulated by Articles 14 and 16 of that constitution.

The political liberalism of the 18th century gave rise to the first generation of human rights, which were enshrined in the first written constitutions (Fix-Zamudio, 2012, p. 429). The tradition of limiting power dates back to the Magna Carta, when English feudal lords compelled King John Lackland to maintain the rights of the kingdom. This act, which secured a set of freedoms, privileges, and franchises for barons, clergy, cities, and free men, marked the beginning of English constitutionalism (Fix-Zamudio, 2012, p. 47).

The United States inherited this tradition of limiting power in relation to citizens' rights. This principle was first articulated in the Virginia Declaration and later enshrined in the first ten amendments to the U.S. Constitution, which collectively form its Bill of Rights. Unlike the Mexican Constitution, the original U.S. Constitution did not include a declaratory section. To address this, amendments are added to the constitution without modifying the original text. In Mexico, constitutional reforms literally

change the existing text, whereas in the U.S., amendments are appended and treated as part of the supreme law of the land, forming what can be viewed as a constitutional block.

The Political Constitution of the Mexican Republic of 1857 (Congress of the Union, 1857), as it was called at the time, contains the principles of fundamental rights that are structural in nature and continue to be a reference point in the current constitution, which was enacted in 1917. Professor Héctor Fix-Zamudio (2012) summarizes them briefly as follows:

1. A los derechos del hombre, se dedicó el título primero que llegó hasta el artículo 34. En el artículo 1° se inscribió una bella fórmula que parece inspirada en el sentido humanista que tiene hoy el constitucionalismo, indicándose que “el pueblo mexicano reconoce que los derechos del hombre son la base y el objeto de las instituciones sociales;
2. En el artículo 45 se acogió una concepción de soberanía que la hace descansar en el pueblo, como lo había dicho la Constitución de Cádiz, a diferencia del artículo 3° del Acta Constitutiva de la Federación que o había hecho radicar en la nación;
3. Sistema unicameral, pues el Poder Legislativo quedó depositado en una sola asamblea que se denominó Congreso de la Unión y se suprimió el Senado en virtud de que los ordenamientos centralistas le habían acarreado un gran desprestigio y se conceptuaba como un obstáculo en el proceso legislativo;
4. Se reguló el juicio de amparo en los artículos 101 y 102, que establecieron las bases para este importante medio de control constitucional, mismas que se recogerán en el actual texto supremo (artículo 103 y 107);
5. Se ratificó una vez más la forma de Estado federal y de gobierno republicano representativo y democrático, artículo 40;
6. Se estableció un sistema de responsabilidades de funcionarios públicos, incluyendo juicio político, artículos 103 a 108;
7. Para los estados de la Federación, se instituyeron reglas para deslindar su autonomía, artículos 109 a 116.
8. En la Asamblea constituyente se manifestaron diversas e importantes opiniones sobre las cuestiones sociales, que después se

recogerían y le imprimirían un sello muy singular a la Constitución Actual. (Fix-Zamudio, 2012, p. 90 y 91)⁸

The 1917 Constitution of the United Mexican States was a product of the Mexican Revolution, which began in 1910, and it incorporated the social demands that fueled the armed struggle. However, Schlarman (2014) notes a preceding event that may have contributed to the conflict: on October 16, 1909, a summit took place in El Paso, Texas, between U.S. President Taft and Mexican President Díaz. During this meeting, a series of requests were made to President Díaz, including the establishment of a military base in Baja California and the restriction of traffic on the Isthmus of Tehuantepec railroad to prevent it from competing with the Panama Canal. President Díaz rejected these requests. In retaliation, the Madero revolution was reportedly conceived under the auspices of the U.S. government of the time to overthrow him (Schlarman, 2014, pp. 485-498).

⁸ 1. The first title, which extended to Article 34, was devoted to human rights. Article 1 contained a beautiful formula that seems inspired by the humanistic sense of constitutionalism today, stating that “the Mexican people recognize that human rights are the basis and object of social institutions.”

2. Article 45 embraced a concept of sovereignty that rests with the people, as stated in the Constitution of Cadiz, unlike Article 3 of the Constitutive Act of the Federation, which had placed it in the nation.

3. A unicameral system was established, as legislative power was vested in a single assembly called the Congress of the Union, and the Senate was abolished because centralist systems had brought it into disrepute and it was considered an obstacle to the legislative process.

4. The amparo trial was regulated in Articles 101 and 102, which established the basis for this important means of constitutional control, which will be included in the current supreme text (Articles 103 and 107);

5. The federal form of government and representative and democratic republican government were ratified once again, Article 40.

6. A system of accountability for public officials was established, including impeachment, Articles 103 to 108.

7. Rules were instituted to define the autonomy of the states of the Federation, Articles 109 to 116.

8. In the Constituent Assembly, various important opinions were expressed on social issues, which were later collected and gave the current Constitution a very unique character. (Fix-Zamudio, 2012, pp. 90 and 91)

The current Mexican federal constitution incorporates second-generation human rights, building upon the first-generation rights. It enshrines fundamental protections such as the right to free and secular education, the right to choose one's work, and the right to perform it under decent, inalienable, and constitutionally protected conditions. The constitution also includes agrarian rights, which regulate communal and ejido land systems.

Furthermore, an entire system for the protection of human rights has been developed to be effective within the country. This system references international standards to which Mexico has committed itself. The rights enshrined in the current constitutional articles are summarized as follows:

Derechos de Igualdad. Artículos 1°, 2°, 4°, 12°, 13°
 Derechos de Libertad. Artículos 3, 5, 6, 7, 8, 9, 10, 11, 24
 Derechos de Seguridad Jurídica. Artículos 14, 15, 16, 17, 18, 19, 20, 21, 23
 Derechos de Propiedad. Artículo 27.
 Derechos Sociales. Artículo 2, 3, 4, 27, 28, 123,
 Derechos Políticos Electorales como Derechos Fundamentales
 Suspensión de Derechos y Garantías. Artículo 29 (CPEUM, 2025, Art. 1-29; 40, 41, 123)⁹

This is how various human rights were integrated as fundamental rights into the Political Constitution of the United Mexican States. These rights are considered the Supreme Law of the Union, given the application of the principle of Consistent Interpretation as outlined in the conjunction of Articles 1 and 133 of the Constitution. This principle is best understood through the constitutional reforms of Amparo and Human Rights, which were enacted on June 6 and 10, 2011, respectively. This reform elevated the status of human rights, placing constitutional norms and international

⁹ Equality Rights. Articles 1, 2, 4, 12, 13
 Freedom Rights. Articles 3, 5, 6, 7, 8, 9, 10, 11, 24
 Legal Security Rights. Articles 14, 15, 16, 17, 18, 19, 20, 21, 23
 Property Rights. Article 27.
 Social Rights. Articles 2, 3, 4, 27, 28, 123,
 Political and Electoral Rights as Fundamental Rights
 Suspension of Rights and Guarantees. Article 29

treaties on the same hierarchical level, with the caveat that constitutional restrictions always prevail. This allows for a more favorable application of human rights in favor of individuals.

As noted by Fix-Zamudio (2012), there has been a debate regarding whether constitutional and international norms are on the same level. This issue was clarified by the Supreme Court of Justice of the Nation in its ruling on Case File 912/2010. The ruling established a Constitutional Block, now also known as the Parameter of Constitutional Regularity—a term coined by Minister Arturo Zaldívar—which affirms that the Mexican Constitution and international treaties together form the supreme norm. The ruling also established the following principles of constitutional interpretation: Conforming Interpretation, Pro-persona, Indivisibility, Interdependence, and Progressiveness, which will be briefly explained below.

The Principle of Conforming Interpretation dictates that the law must be interpreted in accordance with the Constitution and international treaties, with the effects explained previously. This establishes both concentrated and diffuse control of constitutionality and conventionality. Concentrated control allows for non-compliance to be claimed before an Amparo Court, while diffuse control places a duty on the country's judges to analyze the adherence of their decisions to Constitutional Law and to the International Treaties signed and ratified by Mexico concerning human rights (Fix-Zamudio, 2012, pp. 505-523).

The Pro-persona principle consists of the expression “favoring the broadest protection for individuals at all times” (CPEUM, 2025, paragraph II, Art. 1), and is based on two important guidelines: interpretative preference and normative preference. The aim is to maximize the enjoyment of the fundamental right in question as part of the protected human rights (Fix-Zamudio, 2012, p. 527). Fix-Zamudio (2012) specifies the rest of the principles based on paragraph III of the Mexican Constitution as follows:

1. Universalidad, porque pueden predicarse de todas las personas, esto es, su goce es general, sin importar origen, edad, raza, sexo, color, opinión política o religiosa, de una persona;
2. Interdependencia, en cuanto todos los derechos humanos tienen una estrecha relación entre sí, no deben contemplarse de manera

aislada y desvinculados de sus relaciones condicionantes;

3. Indivisibilidad, en virtud de que no debe existir separación, categorización o jerarquía entre los derechos humanos, cuando un derecho se ejercita o se viola impacta por lo regular en otros derechos;

4. Progresividad, implica que gradual en busca de su efectividad y satisfacción, a cargo del Estado queda mejorar las condiciones de ejercicio y exigibilidad de tales derechos, no debe haber retroceso o involución (p. 528)¹⁰

The 2011 constitutional amendments brought about a profound shift in the way Mexican constitutional law views human rights. Before the reform, the Constitution granted “individual guarantees.” Now, it formally recognizes “human rights and their guarantees.” This distinction is crucial, as guarantees are understood to be the state's mechanisms for giving legal effect to and enforcing human rights.

In the case of the United States, the English influence can still be seen in the way power is controlled and in the actions of its authorities over their subjects, which is why constitutional control is also very important to them. The structure of American constitutionalism in the division of powers and the two jurisdictions, seeking checks and balances, as explained earlier in this paper.

Constitutional supremacy is an inherent principle of the U.S. Constitution and is rooted in the precedent set in the 1803 case of *Marbury v. Madison*, which established its use in the defense of individual rights. López Monroy (2006) summarizes the case as a dispute between the Federalist Party, led by President John Adams and Alexander Hamilton,

¹⁰ 1. “Universality, because they can be predicated of all persons, that is, their enjoyment is universal, regardless of a person's origin, age, race, sex, color, political or religious opinion;

2. Interdependence, in that all human rights are closely related to each other and should not be considered in isolation and disconnected from their conditioning relationships;

3. Indivisibility, in that there should be no separation, categorization, or hierarchy among human rights; when one right is exercised or violated, it usually impacts other rights;

4. Progressiveness, which implies that, in pursuit of their effectiveness and satisfaction, it is the responsibility of the State to improve the conditions for the exercise and enforceability of such rights; there should be no regression or reversal.

and the Democratic-Republican Party, led by Thomas Jefferson and James Madison.

The issue arose when the Democratic-Republican Party won a majority in Congress. Before the new administration took office, the outgoing Federalist-controlled legislature rushed to create 16 new circuit courts and 42 new justices of the peace. President Adams proposed a list that included Marshall as Chief Justice of the Supreme Court and Marbury as a justice of the peace. While Marshall's appointment was finalized, Secretary of State Madison did not publish Marbury's appointment, leading to a legal conflict between the two. (López Monroy, 2006)

William Marbury bases his case on the application of Section 13 of the Judiciary Act to the Supreme Court of Justice for the issuance of a writ of mandamus, which the Court could lawfully issue. The Chief Justice in 1803 was John Marshall, and Marbury requested that the writ of mandamus be issued so that his appointment could be made public, which meant that three issues had to be resolved.

The first question is whether Marbury has the right to the appointment he claims. Marshall rules that, having been confirmed and appointed by the President and the Senate, Marbury did have that right. The second question is whether, if the right to the position exists as he claims, there is a legal remedy to support it. Marshall and the Court ruled that the remedy is indeed the writ of mandamus. The third question is whether, even if the remedy exists, it falls within the jurisdiction of the Supreme Court. Marshall answered NO, since the Court, with some exceptions noted in the Constitution, is a court of appeal and, therefore, the writ of mandamus should have been sought in the first instance. Therefore, section 13 of the Judiciary Act, which empowers the Court to issue the writ, is unconstitutional. In this vein, section 2 of Article 6 of the United States Constitution empowers judges to ensure strict compliance with the Constitution. (López Monroy, 2006, pp. 198 and 199)

The precedent set by *Marbury v. Madison* serves as a cornerstone for constitutional interpretation and guides how the laws of the U.S. Congress should be interpreted. American constitutionalism, from its very inception, established its guiding principles, stating in its Declaration of Independence that the people of the United States seek to establish Justice

and promote the general welfare based on Liberty (López Monroy, 2006).

The U.S. Constitution, promulgated in 1787 and adopted in 1789, is structured around seven articles that establish its organic framework and intertwine with individual rights. While the original Constitution lacks a declaratory section, its Bill of Rights—the first 10 amendments—serves this purpose. Furthermore, a review of all 27 existing amendments reveals that they, too, contain fundamental rights. (Constitution of the United States of America, n.d.)

Professor Consuelo Sirvent (2014) concurs that the first 10 amendments constitute the Bill of Rights, and she mentions that the premise regarding human rights is that “all men are equal before the law and therefore have the same right to its protection. All states are equal, and none can receive special treatment from the federal government” (Sirvent Gutiérrez, 2014, p. 127).

This principle of equality and freedom is upheld in the Thirteenth Amendment (which prohibits slavery), the Fifteenth Amendment (granting voting rights regardless of race, primarily for Black people), and the Nineteenth Amendment (which granted women the right to vote).

In Mexico, these rights are enshrined in the first and fourth articles of the Constitution. However, a recent reform establishes substantive equality in favor of women, which breaks with the paradigm of equality before the law and raises questions about the effects this may have on the concept of equality in the Mexican nation.

On the other hand, the First Amendment to the U.S. Constitution consists of a series of fundamental rights:

El Congreso no podrá legislar para establecer una religión oficial, o prohibir la libre profesión religiosa; o para restringir la libertad de expresión, o de imprenta; o para restringir el derecho del pueblo de reunirse pacíficamente, y para solicitar al Gobierno la reparación de agravios. (Constitution of the United States of America, n.d., p. 57).¹¹

¹¹ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

The First Amendment enshrines the rights to freedom of religion, expression, press, assembly, and petition—rights that are also guaranteed by the Mexican Constitution. These rights are protected in specific articles, such as Article 24 for freedom of religion; Article 6 for freedom of expression, which protects the right to express ideas and opinions; and Article 7 for freedom of the press and other media, which also establishes the limits of these rights. Freedom of assembly is protected under Article 9, which is general in nature but is limited to Mexican citizens in political matters and prohibits armed gatherings. Finally, the right to petition is based on Article 8 of the Constitution, with the limitation that it must be respectful and pertains to political matters concerning Mexican citizens.

We can see the parallels in rights between the United States and Mexico, a similarity that extends to the right to keep and bear arms. The Second Amendment of the U.S. Constitution states: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed” (Constitution of the United States of America, n.d., p. 57).

In Mexico, the Constitution also includes the right to keep and bear arms in Article 10. However, this right results in a kind of “fraud against the law.” In practice, it is nearly impossible for the general public to legally acquire weapons due to very restrictive secondary legislation. Furthermore, the trade is monopolized by the Mexican Ministry of National Defense, which means that only criminals, who do not obey the law, possess weapons without any real restrictions. This is an issue worthy of in-depth study and debate, as the Mexican people should have this right to defense guaranteed for their own protection.

The Third Amendment of the U.S. Constitution states: “No Soldier shall, in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but in a manner prescribed by law” (Constitution of the United States of America, n.d., pp. 57–59). This guarantee against the armed forces is almost verbatim to that enshrined in Article 16, paragraph XVIII, of the CPEUM, with the exception that in times of war, the military may demand assistance under the terms of Mexican martial law.

The Fourth Amendment protects individuals from arbitrary searches and seizures, requiring a warrant based on probable cause for any search or seizure of their property (Constitution of the United States of America, n.d., p. 59). In Mexico, these rights are based on Articles 14 and 16 of the Constitution, which establish guarantees of legality and due process. These articles ensure that individuals can only be deprived of their rights, goods, and property by a well-founded and reasoned court order, after being heard and defeated in court (CPEUM, 2025, arts. 14, 16).

The Fifth Amendment is most famous for its provision of the right to remain silent, which does not imply an admission of guilt.:

Nadie podrá ser obligado a declarar por un delito que merezca pena capital u otra pena infamante, si no es acusado o denunciado por un gran jurado, excepto en casos surgidos en las fuerzas armadas, terrestres o navales, o en la Guardia Nacional cuando se encuentre en servicio activo en tiempo de guerra o amenaza pública. Tampoco podrá nadie, por el mismo delito, ser dos veces puesto en riesgo de perder la vida o su integridad corporal; ni podrá ser obligado en ningún asunto penal a declarar en su contra, ni a ser privado de la vida, libertad o propiedad, sin el debido proceso legal; tampoco podrá expropiarse la propiedad privada para su uso público, sin justa indemnización. (Constitution of the United States of America, n.d., p. 59).¹²

The Fifth Amendment includes guarantees against self-incrimination and double jeopardy, as well as guarantees of due process and fair compensation for expropriations. In Mexico, these rights are mirrored in several

¹² No person shall be compelled to be a witness against himself in a criminal case, nor shall any person be compelled to give evidence against himself in a criminal case, except upon indictment or complaint by a grand jury, except in cases arising in the land or naval forces, or in the National Guard, when in actual service in time of war or public danger. Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall a citizen of the United States be in any case, on any criminal charge, compelled of testifying against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." (Constitution of the United States of America, n.d., p. 59)

constitutional articles: the right against self-incrimination is protected by Section II of Article 20; due process is again based on Articles 14 and 16; the prohibition of double jeopardy is established in Article 23; and fair compensation for expropriation is found in the third paragraph of Article 27 of the Mexican Constitution.

The Sixth Amendment establishes the right to a public, speedy, and impartial trial, to have legal assistance for one's defense, to be informed of the charges, and to confront witnesses who testify against one (Constitution of the United States of America, n.d., p. 61).

Mexican law also enshrines these same rights. The right to a public and speedy trial is established in Article 20, Section B, subsection VII, which stipulates that the trial must be public, oral, and without undue delay. The right to be informed of the charges is regulated by Article 20, Section B, subsection III, which guarantees the accused the right to know the charges against them from the moment of arrest. The confrontation of witnesses is regulated under Article 20, Section B, subsection IV, as the right to have their evidence heard under conditions of equality. Finally, the right to legal assistance is enshrined in Article 20, Section B, subsection VIII of the Mexican Constitution (CPEUM, 2025).

The Seventh Amendment of the U.S. Constitution regulates the right to a jury trial in civil cases, and under common law rules, jury decisions cannot be reviewed by another court (Constitution of the United States of America, n.d., p. 61). In Mexico, jury trials are not used in civil matters; instead, an ordinary civil procedure is established. This can be constitutionally equated to the guarantee in Article 17 of the CPEUM, which provides that every person has the right to impartial, prompt, complete, and expeditious justice.

The Eighth Amendment prohibits excessive bail and fines, as well as cruel and unusual punishment. A similar provision is found in Article 22 of the Mexican Constitution, which prohibits unusual or excessive penalties. Additionally, Article 21, paragraph III, establishes that penalties must be proportional to the crime. The limit on fines and bail is addressed in Article 20, Section A, subsection I, which guarantees that precautionary measures, such as preventive detention, shall only be used in justified cases (CPEUM, 2025).

The Ninth Amendment establishes that the enumeration of specific rights in the Constitution doesn't mean that other rights of the people don't exist. This principle upholds the protection of unenumerated rights, similar to what is regulated in the Mexican Constitution in Article 1, paragraph III, which states that all persons enjoy the human rights recognized in the Constitution and in international treaties. Additionally, paragraph II of the same article establishes the pro-persona principle, which dictates that all norms must be interpreted in the broadest possible manner to protect individuals (CPEUM, 2025).

As for the Tenth Amendment, which states that “powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively, or to the people,” its constitutional implications were discussed in previous paragraphs on federalism in the United States (Constitution of the United States of America, n.d., pp. 61-62). Its equivalent is found in Articles 124 and 40 of the Mexican Constitution. The former contains an equivalent provision in the same terms, and the latter establishes Mexico's form of government as a federal republic composed of free and sovereign states (CPEUM, 2025).

Conclusions

In conclusion, while the two constitutional systems share numerous conceptual similarities, particularly regarding human rights, significant differences arise in their practical application. This study, by providing a general overview, highlights the parallels between the United States and Mexican constitutional frameworks, a relationship suggested even by Mexico's official name, the “United Mexican States.”

The close ties linking North America through its economy, culture, and legal ideologies underscore the importance of understanding these similarities and differences. This analysis serves as a foundation for deeper exploration into both legal systems, which would allow for a more nuanced critique aimed at identifying areas for potential improvement in each.

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