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The Mexican Supreme Court and the *Juntas de Conciliación y Arbitraje*, 1917–1924: The Judicialisation of Labour Relations after the Revolution*

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Abstract. This article reviews Mexican Supreme Court decisions concerning the legal status of *juntas de conciliación y arbitraje* (state labour boards of conciliation and arbitration) between 1917 and 1924. During this period the Court played an important role in legitimising these administrative boards, which have since become a constituent part of Mexico's state–labour regime. This examination of the Court's decisions shows how judge-made law contributed to the evolution of industrial relations in the country in the early 1920s. Furthermore, the article's discussion of the connection between the Court's evolving case law and its changing membership in this period indicates how its legal decisions were sensitive to political changes. This presents an early instance of the more recent trend toward the judicialisation of politics in Latin America.

Keywords: Mexico, labour law, legal history, judicialisation of politics, Supreme Court, boards of conciliation and arbitration

Introduction

On 1 February 1924, the Mexican Supreme Court ruled that *juntas de conciliación y arbitraje* (boards of conciliation and arbitration) had the legal authority to resolve labour disputes and to enforce their awards or decisions (*fallos*). The Court thereby overturned the precedents that it had previously established through case law, or *jurisprudencia*, since 1917–18.[1] This ruling,

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[1] In Mexico, *jurisprudencia* normally refers to the courts' case law, that is, to their decisions, not to jurisprudence in the broadest sense. Technically, jurisprudencia denotes five consistent rulings (*tesis*) by the Supreme Court, which together establish a precedent that is binding on the Court itself and on the lower courts until the former makes an explicit ruling

along with others published in 1924, was pivotal for the evolution of labour law and industrial relations in the years following the nation's revolutionary civil war (1910–17). The juntas de conciliación y arbitraje were state agencies or boards which, according to the provisions in the 1917 constitution, would be charged with the resolution of labour conflicts. As quasi-adjudicatory bodies they would largely be responsible for the interpretation and application of state labour legislation. However, beginning in 1917, the Court had regularly held that the decisions of boards were unenforceable, thereby undermining their effectiveness and the very legitimacy of the developing labour law. In contrast, the Court's reversal in 1924 legally enabled the boards to become the principal state institutions for the resolution of industrial relations disputes. By recognising the legality of their fallos, the Court legitimised the boards' status and operation.

The Court's 1924 turnaround was both acclaimed and decried at the time, and has since been noted by scholars.[2] However, the legal and political processes by which the Court came to recognise the status of the juntas have been little studied. Legal treatises refer to the shift in jurisprudencia in 1924, but normally without analysing how doctrine evolved between 1917 and 1924, while historical scholarship has assumed, plausibly, that the Supreme Court probably responded to political pressures.[3] In contrast, this article reconsiders the Supreme Court's seminal 1924 decisions concerning the authority of the juntas by undertaking a historical analysis of the decision-making that resulted in this new jurisprudencia, as expressed in the Court's published opinions.[4] The article examines the factors that influenced the

to the contrary. This narrow definition was ratified in Articles 147–9 of the *Ley de amparo* of 1919, which is reprinted in Suprema Corte de Justicia de la Nación, *Historia del amparo en México*, 2nd edition, vol. 5 (Mexico City, 2000).

[2] See, for example, 'El Pte de la Corte sostiene que las Juntas de Conciliacion y Arbitraje son autoridades/Los que impugnan el carácter de autoridad de dichas Juntas, dice el Lic. Francisco Modesto Ramírez, observan una conducta contradictoria, a Mi Juicio', *El Universal*, 5 Feb. 1924, p. 4; Barry Carr, *El movimiento obrero y la política en Mexico, 1910–1929* (Mexico City, 1981); and Jaime Tamayo, *En el interinato de Adolfo de la Huerta y el gobierno de Alvaro Obregón (1920–1924)*, vol. 7 of Pablo González Casanova (ed.), *La clase obrera en la historia de México* (Mexico City, 1987), p. 34 (citing Carr).

[3] See, for example, Mario de la Cueva, *El nuevo derecho mexicano del trabajo* (Mexico City, 1991), vol. 2, pp. 530–3; Kevin J. Middlebrook, *The Paradox of Revolution: Labor, the State and Authoritarianism in Mexico* (Baltimore, 1995), p. 58 and n. 68; and Carr, *El movimiento obrero*, p. 155. The latter two cite Marjorie Ruth Clark, *Organized Labor in Mexico* (New York, 1973 [1934]), pp. 245–7. María del Carmen Collado Herrera, *Empresarios y politicos, entre la restauración y la revolución, 1920–1924* (Mexico City, 1996), like Tamayo, cites Carr.

[4] Opinions of the Supreme Court have been regularly published under its auspices in the *Semanario Judicial de la Federación* since the late nineteenth century. All published decisions cited herein refer to this reporter, and are cited as *Semanario Judicial* and to the relevant series, the 'quinta época'. In addition, the Court has regularly held public conferences in which significant decisions are read and discussed. Pronouncements from those conferences quoted herein were transcribed and printed in the Versiones Taquigráficas, bound

evolution of the Court's decisions, including both the changes in the Court's membership between 1917 and 1924 and the doctrinal shifts in the Court's legal reasoning. The article thereby indicates how labour relations were judicialised early in the twentieth century, just as law itself was politicised. The article thus addresses issues similar to those considered in recent works on the judicialisation of politics throughout Latin America since the 1980s.

In describing the case-by-case decision-making of the Supreme Court over a period of seven years, during which time the magistrates' bench was renewed three times, the article emphasises four points. The first is that social and political circumstances indisputably comprised the general context in which litigation and judicial decision-making took place. The second is that the changing membership of the Supreme Court affected the evolution of case law or jurisprudencia. The third is that judge-made law evolved as justices continually considered legal doctrine and reformulated it in a litigious, institutional framework.[5] The fourth point concerns how the justices' rulings about the nature of the juntas de conciliación y arbitraje affected the judicialisation of industrial relations. Representatives of labour and employer interests came to articulate at least some of their grievances in a legal language, as they filed appeals in the federal judiciary against the awards of the labour boards, and as the boards in turn framed the disputes over which they presided in a quasi-adjudicatory manner, which the federal judiciary finally recognised in 1924.

The Judicialisation of Politics

Scholars have commented on the increasing importance of the judiciary in political discourse and social conflicts in Latin America over the last 20 years.[6] Such judicialisation has been defined, in part, as 'the way in which judges who carry out constitutional judicial review end up making, or substantially contributing to the making of public policy, thus broadening the scope of "judge-made law"'.[7] The judiciary thereby tends to become involved in policymaking that otherwise or previously had been the domain

volumes that were held in the Supreme Court's archival office in Mexico City at the time of my research in the summer of 2002.

[5] The eleven judges of the Supreme Court in the early 1920s were frequently referred to as *magistrados*; the more common, contemporary term for a judge of the high court is *ministro*. To distinguish Supreme Court judges from lower court federal judges this article normally uses the term 'justice'.

[6] Rachel Sieder, Line Schjolden and Alan Angell (eds.), *The Judicialization of Politics in Latin America* (New York, 2005); Matthew M. Taylor, *Judging Policy: Courts and Policy Reform in Democratic Brazil* (Stanford, 2008); and Taylor, 'Beyond Judicial Reform: Courts as Political Actors in Latin America', *Latin American Research Review*, vol. 41, no. 2 (June 2006), pp. 269–80.

[7] Sieder et al., *The Judicialization of Politics*, p. 3.

of legislative or executive power, while politicians become more sensitive to legal argumentation. Courts and their judgments increasingly affect social and political relations, while social and political conflicts are being resolved in the courts; this further leads to individuals and groups in political and civil society resorting to legal strategies to 'advance their interests'.[8] This process can become one of the 'judicialization of social relations', a term that Guillermo O'Donnell uses to describe a pattern associated with the 'juridification of social relations' by which said 'relations formerly left to autonomous and/or informal regulation, are being textured by formal legal rules'.[9]

Scholars have acknowledged earlier periods of judicial activism in Latin America,[10] and one such encompassed the decade following the signing of Mexico's 1917 constitution. Although it was certainly not fully implemented in the years after its nominal establishment, in the 1920s social actors seeking to legitimise their positions regularly invoked the new constitution in the context of labour relations and frequently sought judicial review. This accorded the federal judiciary an important role in political and social life, a role influenced by factors similar to those more recently identified: the nature of the constitution as well as the scope of the judicial review powers; legal culture; how social and political actors used the courts, that is, 'the patterns of legal mobilization'; and the nature of the political system as a whole. Less important in the period of this study, but not absent altogether, were the 'international dimensions of judicialization'.[11]

Constitutional Foundations

The 1917 constitution shaped the formal premises and limits of labour disputes in three key ways. First, the constitution delegated to the states of the federal republic responsibility for passing labour legislation. Second, it designated the juntas de conciliación y arbitraje to resolve labour conflicts. Third, it retained from the 1857 constitution the *amparo* action as the main legal mechanism by which individuals could protect their constitutional rights, whilst otherwise seeking to strengthen the independence of the judicial branch from the executive. These all led to the federal judiciary playing

[8] *Ibid.*

[9] *Ibid.*, p. 8, and Guillermo O'Donnell, 'Afterword', in *The Judicialization of Politics*, p. 293.

[10] Sieder et al. note earlier judicial activism: see *The Judicialization of Politics*, p. 10. Taylor begins his review article with the statement, 'Legal institutions have always factored into Latin America's political fortunes. Law is an essential ingredient in determining who gets what, when, and how.' 'Beyond Judicial Reform: Courts as Political Actors in Latin America', p. 269.

[11] Sieder et al. (eds.), *The Judicialization of Politics*, pp. 12–16.

a significant role in the making of labour law, as well as to the early judicialisation of industrial relations.

The 1917 constitution dedicated a complete chapter, Article 123, to labour rights.[12] The chapter directed the states of the republic to enact laws in accord with the principles it set forth and, although the constitution included a transitional article to allow for the immediate applicability of constitutional labour rights, labour legislation became a matter for state governments and not primarily the federal government.[13] This was a compromise, as was much of Article 123. Venustiano Carranza, the *primer jefe* of the Constitutionalists who had convened the constitutional assembly, had sought federal control over labour legislation, but delegates favouring local and state-level jurisdiction prevailed. One consequence was that labour legislation was enacted very unevenly across the country by only a few states in the first few years after the promulgation of the constitution. A second consequence was that industrial disputes of national importance, such as strikes affecting strategic, economic sectors, posed legal and jurisdictional issues that could not easily be addressed by either the executive or legislative branches of the federal government. While the federal executive power did in practice resolve major conflicts, its interventions were often ad hoc. The federal branch with the clearest jurisdiction in some instances turned out to be the judiciary.

Article 123 declared in two clauses, the twentieth and twenty-first, that state bodies, the juntas de conciliación y arbitraje, should decide conflicts between capital and labour.[14] The juntas were to be tripartite, administrative organs comprised of representatives of labour and business and presided over by either a municipal or a state government official. Article 123 clearly indicated that these boards were not to be judicial organs, but it failed to specify the types of disputes, collective or individual, in which the juntas should conciliate and arbitrate. Nor did the language of the article unequivocally establish the nature of the boards' decisions: was their arbitration binding on the parties or did it merely constitute an advisory opinion that could be disregarded?

[12] Article 123, Secretaría de Gobernación, Constitución Política de los Estados Unidos Mexicanos, Edición Oficial (Mexico City, 1917).

[13] Transitory Article 11, Constitución Política de los Estados Unidos Mexicanos.

[14] Article 123, clause XX states: 'Differences or disputes between capital and labour shall be subject to the decisions of a Board of Conciliation and Arbitration, to consist of an equal number of representatives of workers and employers and one from the government.' Clause XXI of the same article states: 'If the employer shall refuse to submit his differences to arbitration, the labour contract shall be considered as terminated, and the employer shall be obliged to indemnify the worker by the payment to him of three months' wages and shall incur any liability resulting from the dispute. If the workers reject the award, the contract shall be considered as terminated.' E. V. Niemeyer, Jr., *Revolution at Queretaro: The Mexican Constitutional Convention of 1916–1917* (Austin, 1974), from which the translation of the two clauses is quoted.

Constitutional delegates debated the status of the juntas without reaching a clear conclusion. One group of delegates, including those from Veracruz, urged the establishment of conciliatory mechanisms, using as a model that state's agencies. Another group, headed by Yucatán's delegate Héctor Victoria, supported the creation of tribunals that would in effect form a labour court system, as had already been established by the revolutionary government of his state. Interestingly, José Natividad Macías, one of the main lawyers in the constitutional assembly aligned with the more conservative Carrancist bloc and an author of Carranza's draft charter, persuasively contended that the boards should not replicate law courts, which had perforce to apply legal norms strictly and narrowly. Deftly, Macías argued that the envisaged state labour bodies should be a flexible and accommodating alternative to the legal system, thereby appealing to the animus against lawyers and the legal system of many delegates, who believed that civil courts denied access or were unsympathetic to workers, and were excessively formalistic.[15]

Apart from its deliberations on workers' rights, the constitutional assembly tried to strengthen the judicial branch and ensure its independence from the federal executive. After extensive debate, the assembly amended the 1857 constitution and placed the responsibility for nominating Supreme Court justices with the federal and state legislatures. Article 96 directed the federal congress to elect justices by a majority vote of at least two-thirds of both houses, from a list of candidates drawn up by the state legislatures. The 1917 constitution also gradually introduced lifetime tenure for justices. Article 94 stipulated that the first generation of justices would serve two years (1917–19) and the second generation four years (1919–23). From 1923 onwards, the third generation elected could be removed only for misconduct.[16]

The constitutional assembly, moreover, reaffirmed the legal institution of the *amparo*. An amparo was an injunctive form of judicial relief granted an individual who had applied to the federal court for protection of his or her federal, normally constitutional rights, if these were deemed to be in jeopardy because of the actions of a public official. Pursuant to an amparo petition, a federal district court could order a public authority to suspend an action – such as a state labour board's decision or award against an employer – while

[15] Pastor Rouaix, *Génesis de los artículos 27 y 123 de la Constitución Política de 1917* (2nd edition, Mexico City, 1959); cf. Middlebrook, *Paradox of Revolution*, pp. 56–7. Regarding the animus against lawyers and the judiciary, see Santiago Oñate, 'Administración de justicia y composición de conflictos laborales', in *El derecho laboral*, ed. Graciela Bensusán, vol. 4 of *El obrero mexicano*, ed. by Pablo González Casanova (Mexico City, 1985), pp. 83–4.

[16] Articles 94 and 96, and Transitory Article 5, Constitución Política de los Estados Unidos Mexicanos.

it entertained the petition. The suspension order, as well as the provisional amparo order issued by the lower court, could be appealed in the Supreme Court, which made the final ruling as to whether or not to grant the amparo order.[17] If granted, the public authority's action or decision was in effect nullified, although enforcement of the order was another matter. In any case, the court's judgment applied only to the individual petitioner's litigation: the judicial decision technically did not have wider or general applicability, so that a court's finding of unconstitutionality did not render the law inapplicable against other individuals. The federal judiciary was not supposed to declare laws unconstitutional. However, in practice, an amparo suit in which the Supreme Court held a public authority's action to be a violation of the petitioner's rights could amount to a declaration of the unconstitutionality of the authority's action, and of any law on which the action was predicated.

The amparo litigation of employers that the Supreme Court reviewed between 1917 and 1924 normally led it to assess whether state or municipal authorities had violated the petitioners' individual rights as guaranteed by Articles 14 and 16 of the constitution. Article 14 guarantees the right to due process, as well as to property. Article 16 guarantees freedom from government harassment. The Court typically had to consider the textual meaning of clauses XX and XXI of Article 123, which call on the juntas to resolve labour disputes. If the juntas' resolutions were authorised by these clauses, then their decisions would not have been in violation of Articles 14 and 16; the boards would have been acting lawfully, analogously to a court rendering a judgment correctly for litigants before it.

Given the predominant type of case that reached the Court, it had to focus almost entirely on the constitutional status of the labour boards and the character of their determinations in light of their putative legal authority. Under constitutional principles and the amparo procedure, it was difficult for the federal judiciary to consider other aspects of the labour law emerging in the states, although in a number of instances it did contemplate different provisions of Article 123.[18] Labour law was thus quickly framed, in effect, in constitutional terms, not only because of the provisions stipulated in Article 123, but also because of the amparo procedure. Article 123 raised workers' demands to the level of constitutional rights that still necessitated implementation by employers, labour organisations and different state bodies. At the same time, the scope of judicial review allowed the federal courts to exempt employers who successfully filed amparo petitions from the awards

[17] Richard D. Baker, *Judicial Review in Mexico: A Study of the Amparo Suit* (Austin, 1971), pp. xii–xiii; Ignacio Burgoa, *El juicio de amparo* (38th edition, Mexico City, 2001).

[18] See for example the case of Cervercería Moctezuma, S.A., 14 April 1923, *Semanario Judicial*, 5ª época, vol. 12, p. 752, which concerned the retroactive application of a Veracruz statute requiring profit sharing.

of labour boards applying or fashioning the new labour law. While the federal judiciary's role, at least until 1924, was largely a conservative one, workers and capitalists were resorting to a legal language and judicial institutions to resolve their disputes and reconstitute their relations after the collapse of the Porfirian state (1913–15). Both the recourse to the federal judiciary by employers who invoked their individual, constitutional rights and a developing legal, labour-oriented culture ambivalent about the role of the judiciary tended, ironically, to promote the juridification and judicialisation of industrial relations.[19]

The Politics of Law: The Political and Social Context of Judicial Decision-Making

Notwithstanding a tradition of presidentialism, which the 1917 constitution strengthened and Carranza affirmed, both his presidency (1917–20) and Alvaro Obregón's (1920–4) were weak in several ways.[20] As the country emerged from civil war yet suffered persistent, violent conflicts, both presidents relied intermittently on force and extralegal tactics, even though they were keen to justify their rule and legitimise it by legal means. Each president faced regional strongmen who as governors challenged the power of the federal government in their states. Carranza was particularly hostile toward the populist and socialist experiments carried out by General Salvador Alvarado and his successors in the state of Yucatán between 1915 and 1920.[21] Both presidents also confronted destabilising military uprisings when they tried to ensure the election of their successors toward the end of their administrations, which either led to their deposition or threatened to do so. Carranza was killed in May 1920, while Obregón defeated his military adversaries in early 1924, with the assistance of labour and agrarian forces.[22]

Amidst continuing militarised politics, neither Carranza nor Obregón controlled the federal legislature successfully over the duration of his administration.[23] The Congress frequently found itself in stalemate with the

[19] 'Legal culture' has been defined as 'the cluster of attitudes, ideas, expectations, and values that people hold with regard to their legal system, legal institutions and legal rules'. Laurence Freidman and Rogelio Pérez, *Legal Culture in the Age of Globalization: Latin America and Latin Europe* (Stanford, 2003), p. 2, quoted in Sieder et al., *The Judicialization of Politics*, pp. 12–13.

[20] Presidentialism (*presidencialismo*) here means a predominant executive power subordinating the legislative and judicial branches of government. See Vicente Lombardo Toledano, *La libertad sindical* (1926), reprinted in *Obras completas* (Puebla, 1992), pp. 41–2, regarding the importance of the executive branch as the determining power under Carranza and Obregón.

[21] Francisco J. Paoli and Enrique Montalvo, *El socialismo olvidado de Yucatán* (Mexico City, 1977).

[22] Carr, *El movimiento obrero*.

[23] María Amparo Casar and Ignacio Marván (eds.), *Gobernar sin mayoría, México 1867–1997* (Mexico City, 2002).

executive power.[24] In particular, no political bloc or president proved capable of passing labour legislation, or amending the constitution to allow the federal Congress to assume jurisdiction over industrial relations, despite the belief in some government, labour and business circles that labour law needed to be federalised in order to ensure stability in the country's industrial relations. By one count, between December 1920 and September 1923 the Chamber of Deputies received 12 proposals to enact legislation to implement the provisions of Article 123, but failed to pass a single one.[25] Indeed, it proved impossible even to enact a labour statute for the federal district and territories, something that did not require the amendment of the constitution. Notably, this failure occurred even though many continued to believe that such a statute would enable the labour boards to be institutionalised, thus promoting peaceful industrial relations and avoiding labour conflict.[26]

By 1923, an important part of the labour movement, led by the CROM (*Confederación Regional Obrera Mexicana*), was allied with political leaders in the federal government including Obregón and Plutarco Elías Calles.[27] The CROM had been founded in 1918 under the semi-official auspices of a political ally of Carranza, the governor of Coahuila. But whereas Carranza was ambivalent about the growth of the labour movement, Obregón formed alliances with factions of it, including the CROM, with which in August 1919 he signed a secret pact that would accord the federation a privileged position in the federal government when he became president, via the creation of a separate ministry of labour. Obregón never fulfilled this promise, due to congressional opposition. Nonetheless, the CROM filled important positions in the federal labour department during Obregón's administration.[28]

At the same time, organised labour's influence was increasing not just in the federal government but also in several regions of the country. It became an especially powerful element in state politics in Veracruz. The governor Adalberto Tejeda sided with the CROM to sponsor two statutes. The first, the *Ley Sobre Participación de Utilidades* (Profit-Sharing Law), or as it was popularly called, the *Ley de Hambre* (Hunger Law), became law in July 1921,

[24] Ignacio Marván Laborde describes the stalemate during Carranza's administration in 'Ejecutivo fuerte y division de poderes: el primer ensayo de esa utopia de la Revolución Mexicana', in *Gobernar sin mayoría*, p. 141.

[25] Georgette José Valenzuela, '1920–1924: ¡…Y venían de una Revolución! De la oposición civil a la oposición militar', in *Gobernar sin mayoría*, p. 173 n. 37.

[26] 'Es urgente la reglamentación del Artículo 123 de la Carta Magna', *El Demócrata*, 22 Jan. 1923, p. 2, quoting Plutarco Elías Calles, then Secretary of the Interior (Gobernación).

[27] For general labour histories of the period, see Pablo González Casanova, *En el primer gobierno constitucional (1917–1920)*, vol. 6 of *La clase obrera en la historia de México* (Mexico City, 1980); Tamayo, *En el interinato*; and Carr, *El movimiento obrero*.

[28] Carr, *El movimiento obrero*, specifically pp. 132–4 and Appendix C.

and mandated profit sharing between businesses and workers. The second law, promulgated in June 1923, directed employers to provide partial compensation for their employees' occupational and ordinary illnesses. Employers resisted both statutes vehemently, threatening shut downs of industry, lobbying the presidency to oppose Veracruz's governor – and filing amparo petitions. President Obregón responded to the threats of businesses in 1921, but not in 1923, evidently instructing the *Ministerio Público* to advise courts to grant amparo orders against the profit-sharing law, but not against the 1923 statute.[29] In late 1923, after Obregón designated Calles as his presidential successor, the political situation in the country deteriorated. In December 1923, Adolfo de la Huerta and nearly half the army revolted against Obregón. The CROM rallied to the defence of the federal government, playing an important role in Veracruz against the military rebels and their allies in that state, as well as in other regions. Under these circumstances, Obregón needed the CROM's support.

Aside from the CROM's role in the events in Veracruz and elsewhere in relation to de la Huerta's rebellion, organised labour had managed to expand its influence in other spheres since the re-establishment of constitutional government in 1917. As labour boards were formed in different states, including the federal district, the CROM tended to dominate them. As incipient state organs, the boards offered organised labour and the CROM the opportunity to leverage their power vis-à-vis businesses. Scholars contend that the juntas would comprise the principal element in the formation of new industrial relations as the state was reconstituted after 1917. As Pablo González Casanova put it: 'La clave del nuevo poder y del cambio se hallaba en las Juntas de Conciliación y Arbitraje consagradas por la flamante Constitución. Esas Juntas eran el motor del nuevo Estado en las relaciones obrero-patronales.'[30] The labour boards, haltingly at first, and under the influence of the CROM, came to be a major forum for the fashioning of labour norms more or less consistent with the provisions of Article 123.[31]

Employers viewed the labour boards as encroachments on their managerial prerogatives and strenuously opposed them, just as they defied sweeping labour legislation such as Veracruz's Ley de Hambre. But they could not directly petition the federal executive branch for assistance against the state labour boards' decisions, many of which concerned individual employee complaints and issues such as wrongful dismissal or work-related

[29] At the time the *Ministerio Público*, basically a federal public attorney office, briefed the federal judiciary on the public interest position in litigation before the federal judiciary. The political situation of Veracruz between 1921 and 1923 described in this paragraph is based largely on Collado Herrera, pp. 250–304.

[30] González Casanova, *En el primer gobierno constitucional* (*1917–1920*), p. 29.

[31] Oñate, 'Administración de justicia y composición de conflictos laborales'.

accidents. In large-scale conflicts, the ministry of industry, commerce and labour might intervene, but the federal government lacked the legal jurisdiction and administrative resources to respond systematically to employers' objections to the awards of state labour boards concerning individual workers.

In this political and social context of relatively weak federal executives, a nearly dysfunctional Congress and a growing labour movement, the federal judiciary came to play a role in industrial relations. It was not a role completely determined by the federal executive.[32] The Supreme Court was certainly sensitive to the president's position regarding major cases, such as the amparo petitions seeking to nullify the Ley de Hambre, petitions the Ministerio Público publicly supported. The justices themselves were also hardly disposed to rule in favour of a militant labour movement that threatened radical changes to the privileged positions of employers in their own firms.[33] Contemporaries critical of the Supreme Court's rulings against organised labour recognised this: Vicente Lombardo Toledano, in 1926 a leading CROM intellectual and an early labour law specialist, criticised the Court for adhering to nineteenth-century liberal principles that were adverse to the evolving labour law and the movement that promoted it; General Alvarado, the radical governor who had initiated social reforms in Yucatán, made comparable comments in 1919.[34] Neither suggested, however, that the federal executive must have directly determined the Court's decision-making; political factors had exerted others kinds of influence.

The case-by-case rulings of the federal judiciary that addressed the status of the labour boards between 1917 and 1924 were, in the political and social context of the period, also the function of legal processes. Generally, the cases that the Supreme Court reviewed as ones involving mostly individuals were not overtly political in that they did not necessarily affect the public at large. Nonetheless, the litigation constituted insistent pressure. Whether the Court ultimately recognised the validity and enforceability of the boards' decisions would depend on the persistence of board actions, which in turn depended first on the growth of the organised labour movement that resorted to the boards and secondly on the businesses that turned to the

[32] Pilar Domingo, 'Judicial Independence: The Politics of the Supreme Court in Mexico', *Journal of Latin American Studies*, vol. 32, no. 3 (2000), pp. 705–35. Domingo (p. 710) cites J. F. Cárdenas Gracia, *Una Constitución para la democracia: propuestas para un Nuevo Orden Constitucional* (Mexico City, 1996), p. 173, for the proposition that the federal judiciary was relatively independent of the executive power between 1917 and 1928.

[33] Jeffrey Bortz, *Revolution within the Revolution: Cotton Textile Workers and the Mexican Labor Regime, 1919–1923* (Stanford, 2008), argues for the revolutionary implications of the militant textile workers' movement in such states as Veracruz and Puebla.

[34] Lombardo Toledano, *La libertad sindical*, pp. 42–52; and Salvador Alvarado, *La Reconstrucción de México* (Mexico City, 1989 [1919]), vol. 2, pp. 341–2.

federal judiciary in the absence of other responsive political institutions. It was these social and political factors that affected the legal process, which in turn would shape industrial relations. The federal judiciary's refusal to recognise the administrative boards' application of new labour norms and laws could only have delayed the development of the new labour law. Yet appeals to the courts also meant that disputants in labour matters were continually framing their conflicts in accord with different legal principles, ranging from nineteenth-century liberal ones predicated on contract law to novel ones evolving alongside notions of social legislation. Procedurally, disputants had to consider litigation or taking their problems to various forums, thereby judicialising industrial relations.

The Politics of Law: The Nomination of Justices

The successive renovation of the Supreme Court between May 1917 and July 1923 contributed to the politicisation of the federal judiciary. In this period, the federal legislature elected three cohorts of justices, in accord with the 1917 constitution. The official legislative record, the *Diario de los Debates*, and major Mexico City periodicals indicate that either state legislatures or their delegations in the federal Congress named candidates whom the Congress as an electoral college then elected.[35] The constitutional election of justices did not mean that the executive power was altogether uninfluential or that political factors were absent. The first cohort of justices was generally sympathetic to the political views of Carranza, while the election of the last cohort under Obregón's presidency provoked a major political crisis. It is noteworthy, then, that newspapers and even congressional representatives normally avoided discussions of the ideological positions of the judicial candidates, even when they were lambasting egregious politicking by deputies and senators. Elite views, as expressed in the Mexico City periodicals *Excélsior* and *El Universal* between 1917 and 1924, attempted to separate legal from political discourse, including the politics surrounding the realisation of the putative goals of the revolution. Legislators, including constitutional drafters, had written the law, and judges were supposed to apply it faithfully and carefully.

In its reports of the election of Supreme Court justices in May 1917, *Excélsior* thus emphasised that the major congressional blocs concurred on their selection criteria: they would consider only the honour and professional

[35] *Diario de los Debates de la Cámara de los Diputados del Congreso de los Estados Unidos Mexicanos*, Periodo Extraordinario XXVII Legislatura, vol. 1, núm. 38, 23 May 1917, http://cronica.diputados.gob.mx (accessed 13 Aug. 2008) gives the vote for Supreme Court candidates on this date.

capacity of the candidates.[36] The Congress had avoided nominating candidates according to any political criterion. In the words of the newspaper,

> All the probable candidates appear to have kept their distance from the political conflict of the last few years, and, according to our informant, this will be the principal reason for their probable election, since in accord with the criterion of most members of the Congress, the Supreme Court justices should be upright men … who without preoccupying themselves with the course of politics dedicate themselves only to fulfilling the high duties that the esteemed office imposes on them.[37]

In a subsequent piece the same newspaper acknowledged the existence of some debate, with some favouring candidates with values consonant with revolutionary principles: 'las opiniones se encuentran divididas, pues unos argumentan en favor de candidaturas de hombres versados en el Derecho y honorables a carta cabal, aunque no sean revolucionarios, y otros piden como requisito esencial que hayan laborado por la causa del pueblo'. In any event, the congressional blocs agreed that the nominees should be 'de filiación netamente liberal'.[38]

As lawyers educated in law schools during the Porfirian era, the new justices had much in common.[39] Several had held mid-level positions in the Porfirian bureaucracy or had been law professors. However, they were not drawn from the elite, Porfirian legal establishment of Mexico City. Three had been constitutional delegates: Alberto M. González, José María Truchuelo and Enrique Colunga. González and Truchuelo would dissent from the majority opinions in major labour cases. During the constitutional assembly they had advocated the popular election of justices, a radical-liberal position dating back to the nineteenth century; González had been a member of the reporting committee of Article 123.[40] In contrast, Colunga had been a law associate of Fernando Lizardi, one of the major figures identified with the more conservative Carrancist wing of the constitutional convention. Many of the new justices were not, therefore, apolitical. But neither were they military

[36] 'Las elecciones de magistrados a la Suprema Corte', and 'Elecciones de magistrados a la Suprema Corte', *Excélsior*, 12 and 13 May 1917, respectively; see also 18 and 24 May 1917.

[37] 'Funcionamiento del Poder Judicial', *Excélsior*, 7 May 1917. In another article *Excélsior* reported that the two congressional blocs had eliminated 'el criterio político, por lo que sólo se tendrá en cuenta la honorabilidad, la capacidad jurídica, la probidad y otras muchas cualidades morales y profesionales para nombrar los candidatos'. *Excélsior*, 13 May 1917.

[38] *Excélsior*, 12 May 1917.

[39] Suprema Corte de Justicia de la Nación, *Ministros 1917–2004: Semblanzas* (Mexico City, 2005), 2 vols.

[40] Charles Hale, *The Transformation of Liberalism in Late Nineteenth-Century Mexico* (Princeton, 1989). On the justices' positions as constitutional delegates, see *Ministros 1917–2004* and Lucio Cabrera, *El poder judicial federal mexicana y el constituyente de 1917* (Mexico City, 1968), pp. 64–74.

or popular leaders born of the revolution. Most shared much of the liberal and elitist culture of civilian officials, some of them also lawyers, who served the Carranza administration.

The election of new justices in May 1919 produced a cohort not dissimilar to the first, in a congressional session that *Excélsior* described as 'una de las más tormentosas que se han efectuado durante este periodo'.[41] By the middle of 1919, Carranza's influence in the Congress had weakened substantially, as legislators rallied around the more popular General Obregón, when he announced his presidential ambitions in June.[42] One legal scholar has suggested that by then the major congressional bloc had already elected a cohort closer to the more progressive views of Obregón.[43] The Mexico City bar lobbied unsuccessfully for at least one sitting justice, Victoriano Pimentel, who was renowned for his legal knowledge.[44] *Excélsior* reported how 'papeletas de propaganda en favor de determinados candidatos' were hung over the desks of congressional representatives on the day that judicial elections were held in the Congress.[45]

Legislators re-elected González, whose labour sympathies by then had attracted public attention.[46] In contrast, some of the other new justices had held positions in the executive branch, or evidently adhered to Carranza's more conservative politics. Antonio Alcocer was head of the legal department of the ministry of industry, commerce and labour at the time of his election. Benito Flores was originally from Coahuila, Carranza's home state, and had held various public offices since the Porfirian era. *Excélsior* described him as a lawyer 'de los principales capitalistas y de las instituciones bancarias e industriales más connotadas de la región de la Laguna' [a region in the state of Coahuila].[47] Ernesto Garza Pérez, then 35 years old and employed in the foreign ministry, had held a government position in Coahuila when Carranza was state governor. Reputedly, he had also been a member of the *Partido*

[41] 'En Congreso General fue hecha la elección de magistrados a la Suprema Corte', *Excélsior*, 22 May 1919.

[42] Marván Laborde, 'Ejecutivo fuerte y division de poderes: el primer ensayo de esa utopia de la Revolución Mexicana', in *Gobernar sin mayoría*, pp. 153–6.

[43] Lucio Carbrera Acevedo, *La Suprema Corte de Justicia durante el gobierno del presidente Obregón (1920–1924)* (Mexico City, 1996), p. 23, citing *Excélsior*, 28 Oct. 1919, and Carlos Macías Richard, *Vida y temperamento. Plutarco Elías Calles, 1877–1920* (1995), p. 292.

[44] 'La eleccion de magistrados a la Sup. Corte', *Excélsior*, 13 May 1919: 'varios miembros distinguidos del Foro capitalino, se habían dirigido a la Legislatura de Hidalgo sugiriéndole la conveniencia de que ese abogado fuera el único candidato del Congreso hidalguense, pues que los méritos que tiene y que ha alcanzado a fuerza, da laboriosidad, capacidad y honradez, lo hacen figurar como uno de los jurisconsultos más avocados para integrar la Suprema Corte de Justicia'.

[45] *Excélsior*, 22 May 1919.

[46] 'Pronostico de *Excélsior* acerca de los cc. que integrarán la Suprema Corte', *Excélsior*, 11 May 1919.

[47] 'La Elección de magistrados a la Suprema Corte de Justicia', and 'Quienes son los C.C. que forman la Suprema Corte de Justicia', *Excélsior*, 13 and 23 May 1919, respectively.

Liberal Mexicano and had been jailed in 1903.[48] *Excélsior* reported that Patricio Sabido had collaborated with General Salvador Alvarado's radical project in Yucatán, figuring in the local agrarian commission and the *Tribunal Revolucionario*. Enrique Moreno, re-elected to the Supreme Court bench, had been a government secretary at the side of Calles during the pre-constitutional period in Sonora. José María Mena enjoyed a 'brilliant reputation' in Veracruz and was at the time president of the highest court in that state.[49]

The renewal of the Supreme Court in 1923 provoked a major political crisis in the Congress, resulting in a rupture between the Senate and the Chamber of Deputies. New justices did not take up their posts until late July 1923, almost two months after the designated 1 June starting date. The dominant party in the lower house had tried to promote its list of candidates, but was stymied by a group of 16 dissident senators, who denied the Congress the necessary quorum to elect the justices by absenting themselves from the joint sessions. Obregón's influence over the federal legislature was by then limited. The *Partido Nacional Cooperatista* (PNC) controlled the Chamber of Deputies from January until the end of 1923,[50] and the Congress was only able to elect a new generation of justices after the PNC-dominated Chamber reached a compromise with the dissident senators. The executive branch probably brokered the final terms of the compromise, which guaranteed the Senate the nomination of five justices, the Chamber designating six. This compromise required the PNC to withdraw a number of its proposed candidates.[51]

The Mexico City periodicals *El Demócrata, Excélsior* and *El Universal* persistently condemned the PNC for its attempt to elect partisan lawyers to the Supreme Court bench, as it had done at the end of 1922 in the election of local judges in the federal district. But even those making the most acerbic accusations refrained from being ideological. Although senators and media accused the PNC of attempting to control the judicial branch, or of proposing candidates who were unqualified, they still did not fault or endorse candidates for their conservative or progressive positions. Likewise, Emilio Portes Gil, then president of the PNC bloc in the Chamber, had accused the dissident senators of being PLC (*Partido Liberal Constitucionalista*) obstructionists; what their politics might have meant in reference to policy went unspoken.[52]

[48] *Ministros 1917–1924*, p. 275.

[49] *Excélsior*, 23 May 1919.

[50] See Valenzuela, '1920–1924: ¡…Y venían de una Revolución', pp. 158–9.

[51] See generally *El Demócrata*, 11, 14, 24, 25, 26 and 27 July 1923.

[52] See Emilio Portes Gil's statement in Congress, in *Diario de los Debates*, Periodo Extraordinario, XXX Legislatura, vol. 2, núm. 45, Sesión Permanente, 31 May 1923, http://cronica.diputados.gob.mx (accessed 13 Aug. 2008); and 'Tampoco ayer fue electa la Suprema Corte', *Excélsior*, 5 June 1923, p. 1.

In general, the new cohort of justices was somewhat younger than its predecessors but not overtly more ideological; the new justices had also graduated from law school during the Porfirian era. More patently than other political groups, all three cohorts had been formally educated in a nineteenth-century elite liberal system, yet the justices who assumed their seats on the bench in 1923 were taking office six years after the constitution they were charged to uphold had gone into effect. Before their election, *El Universal* had opined that two justices, Leopoldo Estrada and Jesús Guzmán Vaca, were lawyers who lacked the necessary experience. It faulted Gustavo Vicencio and Garza Pérez for having sat on the preceding, and somewhat slighted, Supreme Court. In comparison, the newspaper lauded Salvador Urbina, among others. Urbina was relatively young, 38 at the time of his nomination, and, at the national law school, had taught political economy and criminal law, legal subjects associated with progressive developments and the social question. *El Universal* wrote that he was 'illustrious, and of rare probity', adding that Ricardo B. Castro, then a senator, was 'not a legal high-flier but did know the science of law; and his honourableness had not been placed in doubt'.[53] These latter two men would pronounce the strongest rationales for the reversal of the Court's jurisprudencia in 1924. Perhaps notably, the Chamber of Deputies had selected Castro as one of its candidates, whilst the Senate had selected Urbina.[54]

The Evolution of the Supreme Court's Jurisprudencia, 1917–24

The evolution of the Supreme Court's jurisprudencia between 1917 and 1924 in relation to the three successive cohorts of justices suggests several tentative conclusions. First, the nomination of justices influenced the direction of case law, but not in a simple manner. The first cohort of justices who presided between 1917 and 1919 tended to interpret the text of Article 123 more formally and view the operation of labour boards more suspiciously than its successors. A discernible change in relevant case law occurred in mid-1921, two years after the second cohort of justices had replaced the first; and the marked reversal in case law occurs in early 1924, several months after the third cohort had assumed office. Explaining the evolution of jurisprudencia thus requires one to examine factors beyond the composition of the Supreme Court bench. One was the changing political and social environment between 1917 and 1924: by 1921, the federal judiciary had to consider employers' amparo petitions in the context of a labour movement that was

[53] 'Por fin, van a ser hoy discutidos los candidatos a magistrados', *El Universal*, 18 May 1923.
[54] 'Las mayorías parlamentarias designaron sus seis candidatos a la magistratura de la Corte', *El Demócrata*, 25 July 1923, p. 1.

asserting its interest in various state and federal governmental organs, including the labour boards, as well as through the then novel *derecho industrial* or labour law.[55] The Supreme Court, however, normally dealt with these changing social and political conditions only indirectly in a case-by-case fashion. It had to evaluate both its earlier precedent-setting opinions and, increasingly, the practical consequences of its decisions. Given that the federal judiciary continued to play a role in industrial relations, its decisions merit examination. As judges decided cases and laid out their reasoning, so legal doctrine and procedure were created.

Before the Lane Rincón Case

Soon after its reestablishment in 1917, the federal judiciary began to entertain amparo petitions from employers in Yucatán. The state was the first to enact a labour statute implementing Article 123, on 28 July 1917.[56] Its radical leadership, first under Salvador Alvarado, from March 1915 to November 1917, and then under Carlos Castro Morales and Felipe Carrillo Puerto, pioneered the establishment of labour tribunals from as early as 1915. As mentioned, Carranza strongly opposed these populist and socialist experiments. In the end he transferred Alvarado from Yucatán, and in July 1919, soon after Carrillo Puerto publicly supported Obregón's presidential aspirations, the president authorised the repression of the socialist party that had been under the direction of Carrillo.[57]

The federal executive's hostility toward the reformist experiments in Yucatán seems to have been shared by the newly elected Supreme Court judges. They consistently ruled against the Yucatán labour institutions in rather similar amparo suits appealing against administrative decisions that supported managerial, supervisory or skilled employees who had brought complaints against their companies over salaries accrued some time before they had filed their action. If, between 1917 and 1920, Yucatán's juntas resolved disputes concerning labourers, rural workers or urban wage employees, the Supreme Court did not issue opinions about these matters. According to historian Gilbert Joseph, Alvarado's populist and social reforms did not initially result in the organisation of rural workers; the cases that the federal judiciary considered are consistent with this observation.[58] In any case, circumstances atypical of most labour situations – involving

[55] Lombardo Toledano, *La libertad sindical*.
[56] Felipe Remolina Roqueñi, *Evolución de las instituciones y del derecho del trabajo en México* (Mexico City, 1976), p. 43.
[57] Gilbert M. Joseph, *Revolution from Without* (Durham NC, 1988).
[58] *Ibid.*, p. 214.

higher-status employees with individual, not collective, claims for relatively large sums owed for contracts fully executed – influenced the evolution of the case law between November 1917 and August 1918, when the Court made a definitive judgment that in large part would remain the manifest, federal law on labour matters until February 1924.

In a four-month period beginning in November 1917, the Supreme Court issued the following published opinions justifying amparo orders against Yucatán's labour boards: J. Crasseman Sucesores, S. en C.,[59] Cabrera,[60] and Fuentes Vargas.[61] All evidenced the Court's dislike of the state government's new labour agencies.[62] In the J. Crasseman opinion, the Court simply adopted the rationales of the federal judge who had suspended the board's actions. The opinions in the Cabrera and Fuentes Vargas cases modified the lower court's readings of Article 123's twentieth and twenty-first clauses. In language repeated in subsequent judgments, the Cabrera opinion construed clauses XX and XXI together as limiting the boards' purview to labour contracts in force and not fully executed.[63] The Court listed precisely the types of dispute that the boards should be addressing; lastly, it denied the juntas the capacity to adjudge matters like a court. The justices' disdain of Yucatán's labour board was further underscored in the Fuentes Vargas case, which the Court decided shortly after the Cabrera suit. Here, the federal judge had denied the amparo petition, holding the employer's petition to be untimely. The justices could have allowed the board's decision to stand on procedural grounds. Instead they reversed the federal judge's ruling, and conceded the amparo petition against the board.

The Lane Rincón opinion

The Supreme Court consolidated its legal doctrine regarding state labour boards when it granted an amparo to Lane Rincón Mines Incorporated in August 1918.[64] Although the Court's ruling would remain in effect as jurisprudencia until early 1924, it was not a unanimous decision, and the lower court judge, on the recommendation of the Ministerio Público, had denied the amparo requested against the central board of the state of Mexico, even

[59] J. Crasseman Sucesores, S. en C., 2 November 1917, *Semanario Judicial*, 5ª época, vol. 1, p. 773.
[60] Guillermo Cabrera, 8 March 1918, *Semanario Judicial*, 5ª época, vol. 2, p. 772.
[61] Francisco Fuentes Vargas, 13 March 1918, *Semanario Judicial*, 5ª época, vol. 2, p. 807.
[62] J. Crasseman refers only to the Junta de Conciliación y Arbitraje; Cabrera refers to the *Tribunal de Arbitraje*, too, which, from the content of the opinion, must have been the review board, though still clearly an administrative body, not a law tribunal or court.
[63] See Cabrera, p. 776.
[64] Lane Rincón Mines Incorporated, 23 Aug. 1918, *Semanario Judicial*, 5ª época, vol. 3, p. 552.

fining the employer for filing the petition.[65] The solid legal bulwark against the juntas had fissures from the outset.

Once again the original complainant was not a wage labourer but a supervisor or manager, given his relatively high salary, while his claim was for back wages for the period between 1914 and 1916. The Lane Rincón company refused consistently to recognise the competence of the board to hear the employee's complaint.[66] Furthermore, there was no state legislation implementing the provisions of Article 123, which might have afforded some substantive legal authorisation for the boards' actions. The state of Mexico had merely enacted a law to regulate the juntas de conciliación y arbitraje in January 1918.[67] The Court consequently had several bases on which to grant the amparo petition, in view of its three recent rulings on Yucatán. It also had a rationale, had it wished for one, for not granting the amparo petition and avoiding the matter, merely by accepting the lower court's ruling.

The Supreme Court preferred to write an opinion that is almost a short treatise, by outlining a set of rationales to justify its amparo order against the junta, at least four of which continued thereafter to undergird litigants' arguments. First, the Court held that an amparo petition could be brought against a board resolution. It was not a trivial point to make. If board resolutions constituted merely conciliatory recommendations, as the J. Crasseman opinion had first suggested, then it was not evident that they needed to be enjoined, or could be, as two justices had reflected aloud in the conference discussing the Fuentes Vargas case. The opinion, however, did not explain its reasoning in these terms. Instead it discussed the status of the boards by referring to the distinction made between public and private law. The Court surmised that conciliation and arbitration of labour disputes by administrative boards were instances of public law decision-making. Their determinations were thus subject to the amparo action.[68]

Second, and most importantly for subsequent labour cases, the Court declared that the junta lacked *imperio*, the power and legal authority that courts possess to adjudicate by issuing decisions with binding effect. The Court reasoned that in view of Article 123, the board was not a law court but a public law institution charged with the task of avoiding large-scale social turmoil that might disturb public order and the organisation of industry and work, which would result from the sudden stoppage of the latter by workers

[65] Published opinions of amparo suits in this period frequently mention whether or not the Ministerio Público has recommended the concession or denial of the petition.

[66] Lane Rincón, pp. 556–7.

[67] See Remolina Roqueñi, *Evolución de las instituciones*, p. 44.

[68] Lane Rincón, p. 558.

or employers. Third, pursuant to clause XX of Article 123, the boards should consider only labour conflicts and no other matter stemming from the employment contract. Fourth, the opinion reiterated the interpretation in the Cabrera case of Article 123, clause XXI, namely, that this provision evidenced the intent of the drafters of the constitutional provision to limit the scope of the boards' review power to existing labour contracts.[69]

The rationales of the opinion comprised a judgment consistent with earlier rulings regarding the juntas, yet the justices differed among themselves about the nature of the boards. González voted against granting the amparo in a separate statement contending that board resolutions should not be subject to such amparo suits. Truchuelo dissented with González from the majority's amparo, because he believed that the boards did have the power to compensate workers as the board's award had ordered.[70]

If the Lane Rincón opinion represented a definitive judgment, it failed to quell altogether the trend of juntas taking up workers' and unions' complaints against employers. Although one labour scholar observed that 'the boards were slow to get underway', in the next five years the federal judiciary were continually obliged to rule on employers' appeals against board rulings.[71] Juntas refused to stick to the judicial limitations imposed by the Lane Rincón opinion, and persisted in subjecting companies to administrative proceedings with arguably binding outcomes. In the face of employer appeals, and such stubborn board activity, the Court's case law, while seemingly adhering to the rationales given in the Lane Rincón case, began to give way point by point. Parties posed one issue after another in ongoing litigation. When workers were the original complainants in state administrative processes, then their employee status could hardly be challenged successfully, yet companies still tried to do so. Likewise, companies attempted to assert that Article 123 should apply only to large-scale conflicts; the Supreme Court rejected these contentions fairly easily. More troubling was the case of a recently sacked individual worker: did his or her claim relate to a completed employment contract outside the scope of board review as jurisprudencia suggested, since the matter concerned a completed or executed contract? And if the administrative bodies were lawful public institutions, charged with the hearing of employment contracts, in what sense were they not competent? What effect could their resolutions have if they lacked imperio?

Initially, at least before the Supreme Court's membership began to change, it appeared that the federal judiciary would be able to dispose of these questions consistently under the Lane Rincón ruling, and even augment the legal bases for curbing board rulings in a series of amparo suits pleaded from only a few states. The Court remained especially adamant that the juntas

[69] *Ibid.*, pp. 558–60. [70] *Ibid.*, pp. 561–2. [71] Clark, *Organized Labor*, p. 245.

lacked any juridical capacity.[72] In the Martínez case, the Court may have taken its most extreme stance, rejecting board pretensions to decide an employment dispute.[73] The opinion began with a flat statement that Yucatán's board had violated Article 13 of the constitution. This prohibited special courts for privileged individuals or entities, a liberal tenet dating to Benito Juárez's opposition to the corporate status of the Catholic Church in the mid-nineteenth century, encapsulated in the Ley Juárez.[74] González and another justice dissented from the majority of seven.[75]

Twelve days after deciding the Martínez case, however, the Court issued its ruling in the Victoria y Anexas, S.A. case.[76] It too repudiated the boards' capacity to adjudicate a labour matter, but the ruling did not invoke Article 13. The Court merely held that the central board of the state of Mexico lacked imperio, its opinion repeating language from the Lane Rincón ruling regarding the board's conciliatory function.[77] A bare majority of six justices voted in favour of granting the amparo order, which entailed reversing the federal judge's denial of the employer's petition. The board had tried to apply the commercial code, which both the mining company and justices deemed to be the province of the law courts and beyond the competence of a junta. At the same time, the Court had concluded that Article 123 stipulated that boards should perform a function in industrial relations, a point not denied by the Lane Rincón opinion. The federal judiciary, it would seem, even after the Lane Rincón ruling, remained unsure of what the boards could actually do.

Toward the La Corona opinion

In June 1919 the composition of the Supreme Court changed.[78] New appointees introduced further modifications of the case law, although the turnover of justices from the first to the second Court does not coincide neatly with the development of precedents, evidenced by the split decision in the Victoria y Anexas case. A more noticeable shift in the Court's position

[72] Junta de Conciliación y Arbitraje de Veracruz, 23 Jan. 1919, *Semanario Judicial*, 5ª época, vol. 4, p. 279.

[73] Florencio O. Martínez, 3 Feb. 1919, *Semanario Judicial*, 5ª época, vol. 4, p. 337.

[74] *Ibid.* at 341–2. On the Ley Juárez as a legal measure against the special jurisdiction of Church courts, see generally Jan Bazant, 'From Independence to the Liberal Republic, 1821–1867', in Leslie Bethell (ed.), *The Cambridge History of Latin America*, vol. 4 (Cambridge, 1984).

[75] Martínez, *Semanario Judicial*, 5ª época, vol. 4, p. 343.

[76] Victoria y Anexas, S.A., 15 Feb. 1919, *Semanario Judicial*, 5ª época, vol. 4, p. 412.

[77] *Ibid.*, p. 417.

[78] See the excerpt of *Libro de pleno de junio de 1919* reprinted in Lucio Cabrera Acevedo, *La Suprema Corte de Justicia, la Revolución y el Constituyente de 1917 (1914–1917)* (Mexico City, 1994), p. 347.

toward labour boards comes only in June 1921, but why then? One can surmise that political conditions had continued to evolve: Carranza's government had given way to Obregón's more progressive and populist politics in May 1920, while organised labour had begun to exercise its influence in several states. At the same time, persistent amparo appeals against labour board actions required the justices to continue to rule on the nature of these state organs.

In any event, in the amparo suit of La Blanca y Anexas, S.A., both the federal judge and the Supreme Court denied the mining company's petition for relief from the award of the Junta Especial de Arbitraje de Pachuca, Hidalgo, which had ordered either the reinstatement of a worker or compensation in the sum of three months' wages.[79] The company had argued, among other things, that the board's actions violated Article 13. The federal judge had rejected this argument, reasoning that the same constitutional text had also directed the formation of the juntas. The Court essentially agreed with the federal judge, and rejected the notion that any activity of the boards entailed a violation of Article 13, stating in one passage that, even if the boards were not tribunals, if the award itself was in accordance with Article 123, it was justified, and could not violate individual rights guaranteed by constitutional Articles 13, 14 and 16.[80] In this case, there was no account of a state agency attempting to enforce the award, so the mere declaration of the award did not contradict the notion that compliance with the board's determination remained voluntary.

One year after deciding the La Blanca y Anexas case, the Court made a clearer break with past case law, without overturning any rulings. In the Las Dos Estrellas case, another mining company asserted that a board yet to be set up under Michoacán's state labour code to hear the claims of four discharged workers would violate its rights under Articles 13 and 14.[81] It was by then a standard argument of employers that the boards were actually impermissible special tribunals in contravention of Article 13. But under the Michoacán labour law the board would have been authorised only to make a determination, which would then have to be enforced by a law court.[82] The Court rejected flatly the assertion that Article 13 could have been violated by the board's decision-making, even if it had acted as a special tribunal – which, the opinion hastily qualified, the boards were not. The second cohort of justices thus refused to entertain the theory that the boards were unconstitutional special tribunals, a theory which the first had briefly adopted. However, the Las Dos Estrellas ruling still rested on the premise that the

[79] La Blanca y Anexas, S.A., 11 June 1921, *Semanario Judicial*, 5ª época, vol. 8, p. 1015.
[80] *Ibid.*, p. 1020.
[81] Las Dos Estrellas, S.A., 29 June 1922, *Semanario Judicial*, 5ª época, vol. 11, p. 794.
[82] Suprema Corte de Justicia, Versiones Taquigráficas, 29 June 1922 session.

boards lacked the power to put into effect their determinations, a view reinforced in this case by the legal framework of the Michoacán labour code.

What the justices found more problematic was the Las Dos Estrellas company's invocation of jurisprudencia that denied the boards the competence to hear cases about terminated contracts, as the underlying dispute involved four former workers. Rather than overturn its precedents, the Court found the four workers to have had employment contracts in existence at the time they filed their complaints. To do so, it relied on the conditions necessary for the termination of an employment contract under the Michoacán labour code. Only one of the parties, the employer, had sought to terminate the contract, and under the state code this was insufficient.[83] One justice, in conference, queried the state law's coherence and maintained that the contracts had been terminated in a manner consistent with the Court's precedents.[84] To apply prevalent jurisprudencia in this case, however, would hinder the boards from even considering cases that Article 123 clearly encompassed. Doubting such limitations, delineated in earlier opinions, the Court now held that boards could hear most disputes arising between an employer and employee, citing the La Blanca y Anexas ruling.[85]

The Supreme Court, now with its second cohort of justices, was thus moving toward recognising a larger role for the labour boards. The limit on juntas being able to hear only disputes arising from contracts in force would not hold if the Las Dos Estrellas and La Blanca rulings acknowledged that boards were competent to address most labour issues. Nonetheless, the Court continued to restrict the juntas to an advisory capacity.[86] If the award had been deemed mandatory, and about to be executed, then the amparo suit would have been justified. In an unusual move, the Court restated its ruling for greater clarity.[87] Only one justice dissented from the majority's denial of the amparo suit. González filed a separate opinion or *voto*, as did a colleague. He focused on the need to recognise the authority of the administrative boards to decide labour cases adequately, and insisted that acknowledging this would not violate Article 13. González distinguished between unconstitutional, special tribunals, which treated people differently and unequally, and courts with particular jurisdictions, of which the boards were an example. The latter maintained the liberal principle of equality before the law. He also rejected the emphasis on the juntas' alleged lack of imperio. For him, jurisdiction was the crucial element of an authority charged with the capacity to resolve disputes.[88] Gonzalez's opinion thus presented an alternative frame of legal analysis, one the Court was not ready to adopt.

[83] Las Dos Estrellas, p. 798.
[84] Versiones Taquigráficas, 29 June 1922 session.
[85] Las Dos Estrellas, p. 798.
[86] *Ibid.*
[87] *Ibid.*, p. 799.
[88] *Ibid.*, pp. 801–2.

Following its Las Dos Estrellas ruling, the Court's judgments in connection with board resolutions were more divided. It continued to maintain that its set of earlier rulings about the competence of the boards to hear only existing contracts were binding. In a narrow decision based largely on procedural grounds, the Court granted the employer its amparo petition in the Texas Company of Mexico case against Veracruz's central board.[89] The Court reaffirmed its jurisprudencia that board decisions did not constitute definitive legal judgments and were mere administrative resolutions, and therefore subject to the amparo action brought before a federal district judge. Narrow as the ruling was, and as settled as the opinion's language seemed, the vote split six to three, González and two other justices opposing the majority's judgment.[90] Similarly, the justices divided in another amparo suit decided on the same day. In Sansores, the employer, an owner of an estate (*predio*) had appealed to the federal district court against a decision of the Yucatán *Tribunal de Arbitraje*.[91] A supervisor had complained to the state's board in April 1917 about unpaid wages accrued between August 1917 and March 1918. The justices again applied established case law in upbraiding the board for having acted outside of its competence. They reiterated the doctrine that the constitution restricted boards to resolving disputes arising from existing contracts. They thus affirmed the district judge's order – but only by a margin of five to four.[92]

The La Corona opinion

On 19 May 1923, the Supreme Court went into recess until 27 July, when a new cohort of justices took their places on the bench. On 24 January 1924, they adjudicated the case of Díaz Ordaz, offering their first major appraisal of the legal authority of the juntas in a published opinion.[93] Did the Díaz Ordaz ruling represent a new stance by a new Court?[94] At first reading the opinion does not seem very remarkable, but it represents another step toward the full legal recognition of the determinations of the labour boards.[95] Not coincidentally, the case involved the central labour board of Veracruz, one of the more active and determined juntas at the time. Like Yucatán, Veracruz

[89] The Texas Company of Mexico, 8 Feb. 1923, *Semanario Judicial*, 5ª época, vol. 12, p. 286.
[90] *Ibid.*, pp. 288–90.
[91] Alfonso C. Sansores, 8 Feb. 1923, *Semanario Judicial*, 5ª época, vol. 12, p. 291.
[92] *Ibid.*, 292–3.
[93] Carlos Díaz Ordaz, 24 Jan. 1924, *Semanario Judicial*, 5ª época, vol. 14, p. 365.
[94] One labour scholar referred to it as the first case in which the Court overturned its earlier case law. See Clark, *Organized Labor*, p. 248 n. 21. Contemporaries also reported the shift in the Court's position. See 'La Suprema Corte hizo justicia a los obreros', *El Universal*, 29 Jan. 1924.
[95] 'Las Juntas de Conciliación son desde ayer autoridades', *El Universal*, 25 Jan. 1924, p. 1.

had been among the first states to enact labour legislation. Since 1917, the municipality of Orizaba in Veracruz had become a centre of labour radicalism under the control of the CROM.[96] By the early 1920s the governor was backing the state's increasingly powerful labour interests against various large industrialists operating there.

In this context, the Díaz Ordaz case was an old one – the federal judge had denied the amparo petition in 1918 – and an odd one in that Veracruz's board had ruled against the employee's claim of wrongful dismissal. The employee had asked the Court to set aside the board's award so that he could proceed into a state court. Significantly, the Court refused, essentially ruling that the board's determination should be binding on the grounds that the employee had consented to the board's decision. Normally employers indicated that they were not submitting to a board's jurisdiction; they were aware of the possible implications of tacitly agreeing to board processes. Nonetheless, administrative board decisions were not supposed to be binding. Now, ten justices declined to undermine the junta's competency, to which they alleged the parties had already consented.[97]

One week later the Court issued its seminal opinion in the case of La Corona, S.A.[98] La Corona, an oil company, had filed an amparo petition with the federal court in Veracruz against an award of the state's central board which had declared the company liable under state law for the work-related injuries of a labourer. Consistent with the arguments of other employers in earlier cases, La Corona contended that the board had again defied binding precedent and ruled on the matter as a law court, arrogating to itself the status of a special tribunal, in violation of the company's rights, guaranteed by Articles 13, 14 and 16. The federal judge had granted the amparo against the junta on the basis of a violation of Article 13, in December 1922. The Court overturned the amparo order. Its opinion was broader than necessary: instead of dismissing the amparo petition, as Veracruz's board had asked it to do, alleging that the petition was procedurally defective, the judgment denied it altogether. The Supreme Court unequivocally rejected the lower court's ruling that the boards were special tribunals in violation of Article 13: 'Nothing more erroneous than this concept because the Boards of Conciliation and Arbitration are not special tribunals'.[99] Different provisions in the same legal text, as a hermeneutic principle, had to be read together to create a consistent rule. From a more policy-oriented perspective, and reminiscent of González's earlier reasoning in dissenting opinions, the Court noted that tribunals with jurisdictions over specific subject matters already

[96] Clark, *Organized Labor*, p. 193.

[97] Díaz Ordaz, pp. 371–3.

[98] 'La Corona', Cía. Mexicana Holandesa, S.A., 1 Feb. 1924, *Semanario Judicial*, 5ª época, vol. 14, p. 492.

[99] *Ibid.*, p. 498.

existed. The states had created them in the proper exercise of their authority to ensure more rapid justice. In this case, Veracruz's legislature had lawfully established the junta. The Court concluded unanimously that the board's award had not violated the company's rights.[100]

The justices reviewed the La Corona case in their public conference on 1 February, then went into a private, secret session.[101] Castro dominated much of the discussion during the public conference. He first disagreed that the board was a special tribunal violating Article 13, stating emphatically: 'Un tribunal especial establece un fuero' – a special tribunal establishes a privileged court of exception.[102] A second issue disposed of quickly was the fact that only one individual was involved in the dispute. Castro argued that individual disputes often expanded into group conflicts, and the two were intimately related.

The central issue that the Court had to resolve remained that of whether the juntas should have the legal authority to make enforceable determinations and order their enforcement: did they have imperio? If they were not 'special tribunals', could their awards have binding effect? The company had relied on the standard reading of clause XXI of Article 123, which Castro simply inverted.[103] The Court now had to address its earlier jurisprudencia; Castro explicitly broke with precedent by distancing himself from the first Court, which had formulated the basic rule that the boards lacked imperio:

> In other decisions the Court has declared, immediately following the promulgation of our Constitution, in the first Court, from 1917 to 1919, that the Boards of Conciliation lacked imperio. In truth, I find it very strange that the same Supreme Court that had just come out of the revolution, which was born from the same Constitution, just after its promulgation, and which was composed in part by three constitutional deputies, came to declare that the Boards could not and should not have imperio.[104]

The Court would have to overturn its controlling precedent, in order to put into effect the intent of the Constitution, according to Castro:

> The truth is that if the authority and imperio of the boards were denied … we would have to conclude that the constitutional congress did nothing to avoid the conflicts between capital and labour in the Mexican republic; but it appears that now our

[100] *Ibid.* The most significant aspect of the ruling related to the Court's holding that the boards had imperio: their determinations would be binding analogously to those of courts. This point is further noted below, in the description of the public conference that accompanied the issuance of the opinion.

[101] Asunto Compañia Mexicana Holandesa 'La Corona', S.A., in Versiones Taquigráficas, 1 Feb. 1924 session.

[102] *Ibid.* (Castro speaking).

[103] *Ibid.* (Castro speaking). Cf. La Corona, p. 497, and the opinion's report of the Veracruz junta's argument using the fact of sanctions as evidence of the mandatory nature of board awards.

[104] *Ibid.*

opinion is changing in the sense of conceding their authority – and on my part the imperio of these boards.[105]

Although no justice explicitly refuted Castro's main point that the boards had imperio, two who had also sat on the earlier (second) Court, Gustavo Vicencio and Garza Pérez, objected to reaching this conclusion, arguing that since the judge's order had focused only on the board's declaration of the award, which had not been enforced, the Court could overrule the judge without having to address legal precedents interpreting clauses XX and XXI of Article 123.[106] Their argument failed to persuade the other justices.

The La Corona and similar decisions upset employers and their lawyers.[107] A major business association, the *Confederación de Cámaras Industriales*, organised one response in the middle of February, an essay-writing contest to examine – and criticise – the Supreme Court's new jurisprudencia.[108] Prestigious jurists sympathetic to business interests presided over the contest: Miguel Macedo, director of the *Escuela Libre de Derecho*, Manuel Gómez Morin, director of the *Escuela Nacional de Jurisprudencia*, and Carlos Díaz Dufóo. The main legal theories presented by participants insisted that board determinations could not be obligatory.

Narciso Bassols authored the prize-winning essay, which distinguished the purposes of boards from those of courts largely on the basis of the constitutional debates that, arguably, reflected the intent of the drafters of Article 123.[109] Bassols noted that the constitutional convention had rejected the idea that the boards should be tribunals. According to Bassols, José Natividad Macías had influenced the drafters of Article 123, endorsing the Veracruz proposal for conciliatory mechanisms against Yucatán's system of arbitration courts. In turn Macías had been influenced by the French treatise writer Paul Pic, who, Bassols argued, had distinguished the system of mandatory arbitration operating in New Zealand from the conciliation systems in Belgium and the United States. New Zealand's arbitration court had not served as a model for the Mexican boards, and the Supreme Court had not understood the distinctions among foreign models as it had fashioned the case law now under attack. As a solution to the current legal and institutional inadequacies, Bassols recommended the creation of labour courts to adjudicate individual conflicts and coexist alongside administrative boards.[110]

[105] *Ibid.*
[106] *Ibid.* (Garza Pérez speaking); see also Vicencio's statement, in *ibid.*
[107] 'Los fallos de la Corte sobre las Juntas de Conciliacion', *El Universal*, 4 Feb. 1924, p. 1.
[108] Mario de la Cueva, *Derecho mexicano del trabajo*, vol. 2 (Mexico City, 1949), pp. 943–50, on which this and the next paragraph are based.
[109] Bassols would become a leading progressive, public intellectual in subsequent years.
[110] De la Cueva, *Derecho mexicano del trabajo*, pp. 944–5.

The Court responded to Bassols in its public conference on 21 August 1924, when in the case of Cía. de Tranvías, Luz y Fuerza de Puebla, S.A. it revoked the amparo order that a federal judge had granted against Veracruz's board in 1919, under the then prevalent case law.[111] The case had involved the widow of a worker killed in a work-related accident. The published opinion consolidated the La Corona ruling; contemporaries found it exemplary of the Court's new jurisprudencia.[112] The Court's ruling rested largely on policy and pragmatic grounds, upholding the binding power of board decisions by noting that otherwise workers would have to sue in law courts, even though the constitutional and statutory purposes for establishing the boards had been precisely to afford labour an alternative to the dilatory procedures of the civil law system, and thus avoid social disturbances.[113] The Court asserted that the boards had to be, in effect, legitimate tribunals charged with resolving all questions related to the employment contract, whether concerning an individual or a group.[114]

During the conference, Urbina pointedly tried to rebut the criticisms that the Confederación de Cámaras Industriales and Bassols had levelled against his interpretation of the intentions of the constitutional delegates.[115] The disagreement between Urbina and Bassols hinged on how each contextualised Macías's statements regarding administrative boards. Whereas Bassols placed Macías's references in a framework about the dispute resolution mechanisms of foreign administrative agencies, Urbina tried to relate Macías's position more to the domestic evolution of labour organisation and the auspicious transformation of the employment contract. According to Urbina, Macías had acknowledged the appearance of the union as an intermediary in the institution of the collective labour contract; and for him the union and the collective labour agreement were the fundamental premises undergirding the provisions of Article 123 that stipulated how the juntas were to be instituted.[116]

[111] Asunto Compañía de Tranvias Luz y Fuerza de Puebla Contra Actos de la Junta de Conciliación y Arbitraje de Veracruz y Presidente Municipal de Orizaba, in Versiones Taquigráficas, 21 Aug. 1924.

[112] Cía. de Tranvías, Luz y Fuerza de Puebla, S.A., 21 Aug. 1924, *Semanario Judicial*, 5ª época, vol. 15, p. 508; and *El Universal*, 22 Aug. 1924, p.1, c. 2.

[113] *Ibid.*, pp. 515–16: 'de otro modo las funciones de las juntas … serían incompletas, si se tiene en cuenta que los obreros tendrían, en cada caso, que ocurrir a los tribunales del orden común, para que se resolviese cualquier diferencia que tuvieran con el patrono, relacionada con el contrato de trabajo'.

[114] *Ibid.*: 'por tal concepto, éstas vienen a constituir verdaderos tribunales encargados de resolver todas aquellas cuestiones que tienen relación con el contrato de trabajo, en todos sus aspectos, bien sea colectivamente o en la forma individual'.

[115] Asunto Cía. de Tranvías, Luz y Fuerza de Puebla, in Versiones Taquigráficas, 21 Aug. 1924 (Urbina speaking).

[116] *Ibid.*

Urbina further deflected Bassols's criticism of the shift in case law by stating the practical consequences of the Court's decisions. Justices had concluded that otherwise revolutionary, constitutional principles would be undermined, and that what Macías had sought to avoid would occur: workers having to litigate in courts. The administrative boards had to be de facto tribunals in order to resolve disputes in accord with principles of fairness and conscience, even though they were not de jure courts: 'no son tribunales de derecho, sino de hecho'.[117] The justice even insinuated that the failure of the Chamber of Deputies to legislate on the labour courts, or reform the civil law, had required the Court to intercede. But Urbina stepped back from the radical assertion that the Supreme Court had enacted law.[118]

Manuel Padilla, the author of the opinion in the case of Cía. de Tranvías, Luz y Fuerza, also spoke in the conference, and related his arguments more closely to then current legal theories around the individual employment contract. Padilla did not declare the advent of a labour law based on the unions and collective contracts as boldly as Urbina. Disputes between individuals regarding their employment contract were definitely civil law issues, but Article 123 had clearly assigned them to the labour boards. Padilla conceded that the boards' politicised nature, which he described more graphically than Urbina had done, was unsatisfactory in practice, but added, 'we should not analyse nor do we have to analyse this point; it is a vice that probably will be corrected with time, as have others, such as when the Executive nominated and removed judicial functionaries at will'.[119]

Conclusion

The judicial resolution of the nature of the labour boards in 1924 was significant in several respects. The actions of the boards at the time posed questions about the extent to which the state should regulate or structure industrial relations, in the face of emerging strong labour movements and organisations, some of them aligned with factions of federal and state governing circles. In institutional terms, the federal judiciary's adjudication of amparo petitions placed the courts in the position of either undermining or affirming the establishment and operation of the juntas. In legal terms, the Supreme Court's belated acknowledgment of the boards' competence to preside over labour disputes contributed to the juridification of industrial relations, even as the La Corona judgment deferred to the boards' decision-making capacity. One reason for the establishment of the agencies, both detractors and proponents agreed, had been to provide workers with an alternative forum for resolving disputes. One might accept Urbina's formula

[117] *Ibid.* [118] *Ibid.* [119] *Ibid.* (Padilla speaking).

that the boards should be 'de facto if not de jure tribunals of law', but workers and employers could still present legal or quasi-legal arguments and counterarguments before the boards that cited norms and rules.[120] The constant appeal against board awards in the federal judiciary meant that labour disputes were regularly framed in the constitutional language of Article 123 and individual rights. The federal judiciary, having tried to deny the boards' legal authority for several years, nevertheless had been obliged to consider legal appeals against them, and had therefore sanctioned them as constitutionally and legally legitimate administrative bodies capable of adjudicating employment matters: industrial relations were thus judicialised at a formative moment in their evolution.

In early February 1924, the Court's seminal judgment was knocked off the front page of *Excélsior* by news of the military rebellion of Adolfo de la Huerta in Veracruz and elsewhere.[121] The two events – a shift or reversal in the Court's jurisprudencia, and the military rebellion affecting Veracruz as well as other regions in the country – were of course linked. Scholars have assumed that organised labour's support for Obregón's government led to the Court's change of direction.[122] Indeed, the Court's La Corona judgment does bear the marks of a political decision. Garza Pérez and Vicencio, who were senior justices, were right: an alternative, narrower interpretation could have disposed of the case. Castro's statement about how the Court appeared to be revising its earlier case law can be read as connoting a degree of resignation or detachment in the face of a different social and political situation. Later in 1924 the new jurisprudencia was hailed triumphantly, in an expression of solidarity, by a more explicitly political body, the Chamber of Deputies.[123]

However, the judgments in the La Corona and related amparo suits were not only political but also legal decisions and constituted not so much a dramatic and capricious reversal in the Court's position as an impending development resulting from the pressure of persistent litigation, and the case law that the Court fashioned in response. Castro had mused that the La Corona decision, in narrow, legal terms, was not such a radical departure as it then seemed. Indeed, earlier decisions had already rejected legal arguments that attempted to strip boards of all authority or contend that they were

[120] Cf. Narciso Bassols, '¿Qué son, por fin, las Juntas de Conciliación y Arbitraje?', in *Revista General de Derecho y Jurisprudencia*, vol. 1 (1930), p. 185.

[121] *Excélsior*, 1, 2 and 3 Feb. 1924. But see 'La autoridad de las Juntas de Conciliación', *El Universal*, 26 Jan. 1924, cited in Collado Herrera, *Empresarios y políticos*, p. 323.

[122] See the citations in note 3, *supra*, and related text.

[123] See 'Voto de simpatía por la H. Cámara de Diputados a la H. Suprema Corte de Justicia de la Nación, por las sentencias pronunciadas por esta en los casos de amparo pedidos por conflictos de trabajo', 7 Oct. 1924, reprinted in *Semanario Judicial*, 5ª época, vol. 14, p. 859.

impermissible special tribunals contravening Article 13. In the Las Dos Estrellas ruling in June 1922, the Court had not only expanded the types of workers' complaint that boards could hear, building on the La Blanca ruling; it had also approved of Michoacán's labour code's scheme for enforcing board awards, which directed how they should be presented to a tribunal. This was one step away from the La Corona ruling, even as the Court had hastened to add then that the boards did not have imperio. González's separate *voto* in the Las Dos Estrellas ruling had already prefigured the eventual turn in the case law, and the Díaz Ordaz decision held, in effect, that the board's decision was mandatory. The shift in case law had arguably begun as early as 1919–21, as the second generation of justices replaced the first. Castro himself had commented on the change in the composition of the Court between the first cohort of 1918 and that presiding in 1924.

Although it is certainly possible that President Obregón reached an understanding with the Court about the need to recognise the authority of the juntas, it is clear that the Court's decision-making was affected by changes in its composition in July 1923.[124] As soon as the new justices had joined the bench, its position had become increasingly sympathetic to organised labour. For example, in August 1923, in the Gambú case, all eleven justices voted unanimously to revoke an order issued by Puebla's federal judge in January 1922, which had suspended the formation of a central conciliation and arbitration board pursuant to state legislation.[125] Gambú is a brief opinion, but noteworthy because the justices rejected the employer's complaint that she had suffered harm by being required to name a representative to an administrative board – the kind of prejudice to an employer's interests that the Court had found only a few months previously in a set of decisions effectively nullifying Veracruz's Ley de Hambre.[126] The Court distinguished the Veracruz cases from the Puebla one on legal and constitutional grounds, yet the Gambú case indicated a Court more inclined to accommodate labour interests.

In 1924, the Court justified its rulings in favour of labour and the authority of the juntas by reference to policy, the social realities of the time and the consequences of its decisions. The 1924 opinions emphasised the underlying purpose for the constitutional provision requiring that juntas resolve employment disputes, although without disregarding the text of Article 123. The Court alluded to the potential consequences if it refused to recognise the

[124] Cf. Middlebrook, *Paradox of Revolution*, p. 58. Interestingly, the Ministerio Público recommended ruling against Veracruz's board in La Corona; see *Semanario Judicial*, 5ª época, vol. 14, p. 497.

[125] María Gambú, Viuda de Maurer, 31 Aug. 1923, *Semanario Judicial*, 5ª época, vol. 13, p. 342.

[126] Cervecería Moctezuma, S.A., 14 April 1923; and Cía. Agrícola Francesa y coagraviados, 28 April 1923, *Semanario Judicial*, 5ª época, vol. 12, p. 856.

authority of the boards. In public conference, Urbina, Castro and Padilla observed the social and practical implications of the Court's new jurisprudencia. Urbina argued that the labour boards had to reflect the social realities of the time: the labour movement and the law being created through collective contracts between unions and employers. Castro saw the division between individual and collective disputes as artificial and formal: individual disputes frequently evolved into collective ones, and therefore the boards should have jurisdiction of both, given the practical reasons for their establishment. And Padilla referred to the then political nature of the boards and the delaying tactics of employers who argued against the imperio of the boards' decisions. These observations indicate a policy-oriented form of legal reasoning concerned with the objectives of reformist government programmes and the conditions they addressed. The new jurisprudencia was a shift from the narrower, more formal kind of legal reasoning of the published opinions of the Supreme Court justices who presided between 1917 and 1919. The new jurisprudencia was certainly more politically sensitive, regardless of whether it was the result of immediate political pressures.

In any event, jurisprudencia was the product of the decisions of the Supreme Court's judges, whose views differed. Moreover, the views of justices varied more decisively as successive cohorts assumed their positions on the Court, even as its published opinions had begun to acknowledge the status of the labour boards. The nominating process for justices and the composition of the Court obviously had a political dimension, yet contemporary 'public opinion' indicative of the broader 'legal culture', as expressed in major newspapers or by public officials, tried to deny that policy-oriented or ideological factors influenced the justices' nomination. Meanwhile, one stated aim for establishing the juntas had been to circumvent a judicial system that was seemingly unsympathetic to workers' needs. Such a belief not only reflected a 'revolutionary' animus against judges but also assumed that an alternative forum was better suited to dealing with modern industrial problems. Courts ideally applied the law narrowly, without reference to political criteria. In contrast, labour boards, as lay mediating bodies, could entertain non-legal factors in their determinations, but within a legal-cultural tradition still evident in the early 1920s they were not supposed to issue orders that could deprive parties of their rights: this was the prerogative and function of the law courts. The Supreme Court's decisions in 1924 holding the boards capable of issuing binding decisions in part eroded this imagined separation between legal and political decision-making, which had been breaking down through constant legal challenges and because of changing social and political circumstances. In the end, labour boards would become politicised courts in all but name, and the nomination process for justices would be amended in 1928, 1934 and thereafter to ensure the judicial

branch's direct subordination to the executive.[127] But by 1924 the Court's jurisprudencia regarding the authority of the labour boards reflected a growing politicisation of adjudication, that is, a form of legal reasoning by the justices more concerned with the policy implications of their decisions. In this legal and political context, the further judicialisation of industrial relations ensuing from the legal affirmation of the power of the labour boards would contribute to the greater politicisation of law in Mexico.

Spanish and Portuguese abstracts

Spanish abstract. Este artículo revisa las decisiones de la Corte Suprema mexicana relacionadas con el estatus legal de las juntas de conciliación y arbitraje laborales del Estado entre 1917 y 1924. Durante este periodo, la Corte jugó un papel importante en la legitimización de tales juntas administrativas, que se habían vuelto parte constituyente del régimen laboral estatal de México. Este examen de las decisiones de la Corte muestra cómo leyes hechas por jueces contribuyeron a la evolución de las relaciones industriales en el país a principios de los años 20. Asimismo, la discusión de la conexión entre la jurisprudencia de la Corte y su cambiante membresía en ese periodo indica que sus decisiones legales fueron sensibles a los cambios políticos. Lo anterior representa una temprana instancia de la tendencia más reciente alrededor de la judicialización de la política en Latinoamérica.

Spanish keywords: México, derecho laboral, historia legal, judicialización de la política, Corte Suprema, juntas de conciliación y arbitraje

Portuguese abstract. O artigo examina decisões do Supremo Tribunal de Justiça do México referentes ao estado legal de conselhos estatais de conciliação e arbitragem trabalhista entre 1917 e 1924. Ao longo deste período o tribunal desempenhou importante papel em legitimar os conselhos administrativos que desde então se tornaram parte constitutiva do regime mexicano trabalhista estatal. A análise das decisões do tribunal demonstra como leis escritas por juízes contribuíram para a evolução das relações industriais no país no início da década de 1920. A discussão sobre a conexão entre o direito jurisprudencial em evolução e o quadro de membros em transformação durante o período ainda indica a suscetibilidade das decisões legais às mudanças políticas. Representa uma das primeiras instâncias da tendência mais recente em direção à judicialização da política na América Latina.

Portuguese keywords: México, direito do trabalho, história da justiça, judicialização da política, Supremo Tribunal de Justiça, conselhos de conciliação e arbitragem

[127] Bassols, '¿Qué son, por fin, las Juntas de Conciliación y Arbitraje?' and Domingo, 'Judicial Independence'.