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**THE IMPACT OF JUDICIAL DECISIONS IN MEXICO**  
**THE CASES OF SAME-SEX MARRIAGES AND CANNABIS**  
**LEGALIZATION**

MA Thesis in Public Policy

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**THE IMPACT OF JUDICIAL DECISIONS IN MEXICO**  
**THE CASES OF SAME-SEX MARRIAGES AND CANNABIS LEGALIZATION**

by

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(Mexico)

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To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non – degree program, in English or in any other language.

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# Abstract

This thesis has as an objective to analyze what kind of effects judicial decisions produce on Mexico. To carry out this research were chosen two judicial decisions made by the Mexican Supreme Court. The first one is the ruling 237/2014 that authorized four people to grow, possess, transport and consume Marihuana for recreational purposes. The second one is the jurisprudential thesis 43/2015 that declared that state laws restricting marriage to heterosexuals are unconstitutional. The main argument of this research is that judicial decisions may produce four kinds of effects in Mexico, these are: direct, institutional, symbolic and collective action impacts. When court orders achieve to produce all these effects they can create a social change. However, to generate these impacts litigants should overcome five constraints, which are: the proclivity of tribunals to favor the status quo, political opposition, social opposition to reforms, strengths and strategies of interest groups and implementation problems. The more constraints litigants overcome, the more effects judicial decisions can produce in Mexico.

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# Introduction

On November 2015, the Supreme Court of Justice in Mexico ruled to allow four people to grow, possess, transport and consume Marihuana for recreational purposes. Several national and international newspapers cover the issue telling that this ruling was historical because it would legalize marijuana on the country and in all Latin America (New York Times, 2015). The same was said when previous months, on June 2015, the maximum tribunal made public a jurisprudential thesis that declared that state laws restricting marriage to heterosexuals are unconstitutional. Traditional media claimed that this judicial decision would legalize gay marriages in Mexico and would transform this conservative country into a liberal one (The Guardian, 2015).

However, it can be appreciated that three years later these “historical” rulings did not produce the great social change that many expected. Neither cannabis-based substances nor same-sex marriages were declared lawful in Mexico. Nowadays, being caught with six grams of Marihuana in the street is reason for being taken to jail. Moreover, in some states, homosexual couples should start a legal fight to be able to get married.

In spite of these facts, there are some academics (Salinas, 2017; Valdivia-García, 2016) that claim that these two judicial decisions, although did not produce a great social change, they had some consequences in the political system. For example, these judgments inspired the president Enrique Peña Nieto to present two initiatives in the National Congress, one to legalize Marihuana for medical and scientific purposes and other to authorized same-sex marriages across the country. Therefore, these scholars argue that the two court orders really had an impact in Mexico.

In some way, these two views are conflicting. While the first one totally denies the effects that judicial decisions can produce in a political system, the second one supports the idea that courts are very dynamic and are able to generate a social change. Some authors (Rosenberg, 1991; McCann, 1994; Rodríguez-Garavito, 2011) have already addressed this issue, however, the conflict remains, some support the first view (Rosenberg, 1991), while others advocate for the second one (Rodríguez-Garavito, 2011).

For that reason it is important to continue analyzing if judicial decisions are able or not to produce a social change, specially because many activists and human rights defenders in many parts of the world use courts to promote a cause. So, it is necessary to see if it is worth to start a legal fight to defend a human rights issue. Moreover, this kind of researches becomes more important in Mexico since there are few studies about the impacts that judicial decisions can produce in the country. The most important researches that have been carried out in Mexico related to this issue (Martínez, 2016; Ferrera, 2012 and Salinas, 2017) claim that courts are able to introduce the matter under consideration in the governmental agenda, however, they do not explain why and under what circumstances this can happen.

Therefore, the main objective of this thesis is to analyze what kind of effects judicial decisions produce in the Mexican political system. This research will go beyond the typical dichotomy of the role of courts and will try to answer what happens in Mexico to the judgments once they leave the courtroom? What kind of effects they produce? What accounts for the different levels of impact of judicial decisions? Why do some decisions have deep and multifarious effects, while others remain on paper?

The main argument of this research is that judicial decisions may produce four kinds of effects in Mexico, these are: direct, institutional, symbolic and collective action impacts. When court orders achieve to produce all these effects they can create a social change.

However, to generate these impacts litigants should overcome five constraints, which are: the proclivity of tribunals to favor the status quo, political opposition, social opposition to reforms, strengths and strategies of interest groups and implementation problems. The more constraints litigants overcome, the more effects judicial decisions can produce in Mexico.

To carry out this research were chosen two judicial decisions made by the Mexican Supreme Court. The first one is the ruling 237/2014 that authorized four people to grow, possess, transport and consume Marihuana for recreational purposes. The second one is the jurisprudential thesis 43/2015 that declared that state laws restricting marriage to heterosexuals are unconstitutional. These two resolutions were chosen because both were ruled in the same year, so, it is possible to maintain a variable control because they share the same context.

Moreover, these two judgments addressed two issues that are very important at international and national level. For example, in Mexico, thousand of people have lost its life due to the security policy that have implemented the two last governments to end with drug traffickers. Therefore, it is important to analyze why cannabis-based substances were not legalize in the country in despite of the decision of the Supreme Court. Same-sex marriages are also an important issue in the country since Mexico is one of the countries where homosexuals suffered a lot of discrimination (Ordaz, 2016). So, it is very important to analyze what kind of effects these judicial decisions produced in Mexico and explain why these two court orders generated different impacts.

To elaborate this research I will use a qualitative method. I will review and analyze newspapers, presidential statements, legislative projects, books and researches to develop the discussion. However, I also collected some data and used some graphs to support the main argument.

The thesis has the following structure. The first chapter explains the different research perspectives on courts and politics. In the second chapter I developed an analytical framework to analyze the effects that judicial decisions can produce on political systems. The third chapter analyzes the case of the ruling 237/2014 about Marihuana legalization to see the impacts that this court order generated in the country. The fourth chapter evaluates the case of the jurisprudential thesis 43/2015 related to same-sex marriages. After that I make a comparison between the two cases. Finally, the document finishes with some conclusions and final comments. With this research I hope contribute with the existing literature.

# Chapter 1

## Different perspectives on courts and politics

There are two different approaches in political science to study “courts and politics”, the US-American perspective and the European one (Rehder, 2007). Four differences distinguish one from the other (Rehder, 2007).

The first two differences are related with the level and dimension of analysis (Rehder, 2007). In the US-American approach, political scientists tend to study courts in a micro level, they focus on the behavior and the decision-making process of the judges. These scholars try to answer what –if no legal reasoning- determines judicial decisions (*Idem*, p. 12). By contrast, the European perspective analyzes courts in a macro level. Scholars from this approach consider judiciary as a part of the broader institutional structure of the political system. In this sense, they investigate the effects that judicial decisions produce on the state (*Idem*, p. 12). They want to answer if judicial decisions produce a social change or have an impact in the policy-making process.

The third and fourth differences have to do with the perception of the legal system and how each approach understands the interaction of legal and political systems. In the United States, academics see legal activity as an extension of political action by other means. “Judicial action is described as a sub-type of political action and as one element among broader political processes. Judges are regarded as policy-makers driven by party affiliations or policy preferences. Just like parties or governments, courts are thought to be the target of interest group strategies” (Rehder, 2007: 10). Contrary to this view, the European approach consider judiciary as an autonomous sphere that is not invaded by politics, it follows its own

logic. For these political scientists, legal activity unfolds at the expense of political action. Judges take their decisions based on legal reasoning without the intervention of politics and it “is assumed that judicial methods of decision-making enter the policy process and that judicial discourse penetrates political discourse” (*Idem*, p. 10).

The next figure, taken from Britta Rehder (2007), summarizes the different research perspectives on courts and politics.

Figure1. Major features of the debate

	USA	Europe
Level of analysis	Micro-level: judge	Macro-level: court
Dimension of analysis	Process: politics of judicial action	Effects: political impact and functions of judicial action
Perception of the legal system	Extension of political system	Autonomous sphere
Interaction of legal and political system	Politicization: politics invades legal sphere	Juridification: judicial action invades or displaces politics

Source: Rehder (2007)

This thesis will adopt the European perspective to analyze what effects the judicial decisions on marihuana consumption and same-sex marriage produced on the Mexican political system. For that reason it is important to explain the two views of the role of the courts in political systems.

According to Rosenberg (1991), there are two views of the role of the courts in political systems: the view of the Dynamic Court and the view of the Constrained Court. The Dynamic Court maintains that Supreme Courts are capable to widespread social change and generate political and administrative reforms. This view believes that judicial decisions can produce a significant social reform because judiciary compels legislative and executive branches to take action on a specific issue. Generally, politicians do not promote certain topics for fear of political repercussions. It does not matter if it is a fair cause, elected officials will not fight

for a cause if it is unpopular. By contrast, courts are free from electoral constraints; therefore, they have the capacity to act where other institutions are politically unwilling or structurally unable to proceed (Rosenberg, 1991: 21-30). According to the Dynamic Court view, this situation allows tribunals to produce a social change because, through judicial decisions, Supreme Courts force elected officials to act in those causes that have electoral repercussions but are fair.

Moreover, the Dynamic Court view also suggests that tribunals can provide publicity for issues and serve as a catalyst for change. One of the advantages to take a cause to the court is that traditional media covers all the judicial process creating, by this way, public opinion about the issue. This is very important since press coverage and public opinion can put the issue in the agenda of the Congress. In addition, the judicial interventions may shape and reframe the understanding of the issue under consideration. For that reason, proponents of the Dynamic Court view claims that court decisions are capable to prompt social reforms. And, further, court action may invigorate and encourage groups to mobilize and take political action (Rosenberg, 1991: 21-30).

In contrast with this vision, there is a long tradition of legal scholarship that views the judiciary as the least dangerous branch of government (Rosenberg, 1991: 3). This view holds that courts are incapable of producing a significant impact on political systems for two main reasons. First, for court orders to be carried out, political elites, electorally accountable, must support them and act to implement them. This means that if elected officials and other powerful groups do not support a judicial decision, very unlikely this decision will generate a social reform since these influential interest groups will do everything to reduce the impacts of the decision. Moreover, court decisions should also face the values and culture of society. If most of population does not agree with the judgment of the court, the judicial decision will

face a lot of resistance and will not produce the wanted effects. In this sense, policy reforms and social changes do not lie in the Supreme Court, but in other forces that allow the change (Rosenberg, 1991). For that reason, the Constrained Court view holds that judicial decisions cannot generate an impact in political systems.

The main proponent of this view is Gerald Rosenberg, who claims, in his famous book *The Hollow Hope*, “US courts can almost never be effective producers of significant social. At best, they can second the social reform acts of the other branches of government. Problems that are unsolved in the political context can rarely be solved by courts” (p. 338).

As we saw, there are two postures on the debate about the consequences that judicial decisions produce on political systems: that one that holds that court judgments have huge impacts on political life of countries and the other one which claims that tribunal verdicts hardly ever produce repercussions on political systems. However, there are some scholars (for example Rodríguez-Garavito, 2011) who argue that academics could generate a deeper discussion if they go beyond these two views and answer more complex questions such as what accounts for the different levels of impact of judicial decisions or why do some decisions have deep and multifarious effects, while others remain on paper.

This thesis tries to answer those questions for the Mexican case and for that reason in the next chapter I develop an analytical framework that will help us in this task. I will base on the works of Rodríguez-Garavito (2011) and Rosenberg (1991) to elaborate my own framework.



## Chapter 2

# The effects of court decisions: an analytical framework

### Type of effects

In opposition to the argument elaborated by Rosenberg (1991), Rodríguez-Garavito (2011) proposes a framework to explore the impact that prominent judicial decisions have on political and social reforms. For him (p. 1679), the effects of court judgments should be analyzed taking into account the direct and indirect impacts that they generate. As the author explains (p. 1676-1679), most of the studies that have theorized and evaluated the outcomes of judicial decisions have focus exclusively on the direct effects that they can produce however they set aside the indirect and symbolic effects that court decisions also accomplish. In this sense, he suggests (p. 1679) to analyze court judgments examining the direct impacts, indirect impacts, symbolic effects and material effects of these decisions.

The direct impacts include all the court-mandated actions that affect the participants in the case and the members of the group they belong. In this sense, the direct impacts include: the court orders, the presentation of initiatives and the discussion of the issue in the Congress, the organization of national debates and forums to analyze the topic, the design and implementation of public policies to remedy the situation of litigants, the reproduction of similar judgments in local courts, and all the benefits and tangible changes that are derived from all these actions.

The symbolic effects “consist of changes in ideas, perceptions, and collective social constructs relating to the litigation’s subject matter. In sociological terms, they imply cultural or ideological alterations with respect to the problem posed by the case” (Rodríguez-Garavito, 2011: 1680). These effects can be examined through national polls related to the case, surveys, coverage in the press and media framing. However, it is also important to see how court decisions influence and change the way victims perceive themselves.

Rodríguez-Garavito (2011) argues that courts orders also produce indirect and material effects, however, from my point of view, the author does not accomplish to explain the difference between the two groups. Moreover, I consider that the names of the groups do not capture the nature of the effects. For that reason, I propose two new groups of effects that judicial decisions can produce: institutional impacts and collective action effects.

The institutional impacts refer to the effects that court orders can produce on institutions. For example, judicial decisions can make different ministries work together and cooperate to solve the problems of the litigants. This happened in Colombia, where through some judicial decisions the ministry of Development and the ministry of Economy began to work together to find a solution to the problem of refugees. In addition, court orders also can strengthen institutional capacities to deal with such problems.

Finally, collective action effects include all kind of impacts that the judgment had on civil society organizations. In this sense, the emergence of new movements related to the issue, the intervention of new actors in the debate and the collective search for solutions are considered collective action effects.

The next figure summarizes the four kinds of effects that judicial decisions might produce on a political system.

Figure 2. Types of Effects of Judicial Decisions

Direct Impacts	Institutional impacts
<ul style="list-style-type: none"> <li>• The court order</li> <li>• Presentation and discussion of initiatives about the issue</li> <li>• Design and implementation of public policies</li> <li>• Agenda setting</li> <li>• Reproduction of similar judgments in local courts</li> <li>• Tangible changes derived from these discussions and policies</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthening of institutional capacities</li> <li>• Coordination among institutions</li> </ul>
Collective action effects	Symbolic effects
<ul style="list-style-type: none"> <li>• Collective search for solution</li> <li>• Interventions of new actors in the debate</li> <li>• Emergence of new movements</li> </ul>	<ul style="list-style-type: none"> <li>• Press coverage</li> <li>• Reframing the issue</li> <li>• The creation of public opinion</li> <li>• Influence on victims groups</li> </ul>

Source: Own elaboration based on Rodríguez-Garavito (2011)

This framework is very useful because it can be used to analyze prominent judicial decisions in any country or region. For example, if we want to analyze the effects that the EU antitrust ruling against Google produced on Europe, we can apply this framework and we might find interesting discoveries. For example, after this judicial decision many national courts in Europe began to investigate tech giants (see the case #GoogleYouOweUs), but not only that, this court order also generate public opinion on the issue around the world, it had huge symbolic effects. Therefore, I consider that this conceptual framework will also works for our purposes.

However, this theory would be incomplete if we do not explain under what circumstances these effects are produced. Sometimes, we can find cases where judicial decisions only produce symbolic effects but not collective action or direct effects. And, in sometimes, judicial decisions are not able to generate any impact. For that reason, it is necessary to explain under what circumstances this is possible.

## Constraints

To explain the conditions in which judicial decisions can generate an impact in political systems, it is necessary to understand the obstacles that court orders face to have effects. For that reason, in this section I will explain each obstacle and helpers to overcome that constraint. These constraints and strategies are based on the theory of Rosenberg (1991) but with substantial modifications.

I identify five constraints that impede judicial decisions to produce changes, these are: the proclivity of tribunals to favor the status quo, lack of political support, the emergence of opposition within society, strength of interest groups and problems to implement courts decisions.

The first constraint may seem extremely obvious but is very important. If a ruling favors the status quo it is very unlikely that this decision can have effects. For example, in Mexico, many court decisions related to security issues have favored the status quo<sup>1</sup>; these rulings supported the current security policies, therefore, as we can imagine, these decisions didn't have any effect in the political system. At the most, these decisions were covered by one or two newspapers and caused the anger of the litigants, but they were unable to generate other impact in the regime. These decisions only served to reinforce the status quo. In this sense, a court decision, to produce a social reform, should rule against the state of affairs.

As Rosenberg (1991:36) suggests, the existence of ample legal precedent for change helps courts to rule against the status quo. In this sense, if some courts in other parts of the world or local judiciaries have already reinterpret the constitution in a way that challenges the status quo, there is a high possibility that the judgment favors litigants and this can produce other effects in the political system.

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<sup>1</sup> See, for example, the rulings 4624/2015, 11/2014 and 10/2014 emitted by the Mexican Supreme Court.

For example, in many parts of the world, several courts had ruled in favor of recreational cannabis use, as a consequence, there were high probabilities that the court in Mexico ruled in this line. Therefore, the first constrain for court orders to generate a change in the regime would be as follows:

- Constraint I: The proclivity of tribunals to favor the status quo
  - Overcoming Constraint I: The existence of ample legal precedent for change.

Political ambitions and interests are the second constraint. For court orders to be carried out, political elites, electorally accountable, must support them and act to implement them (Rosenberg, 1991:13-21). The Supreme Court can rule against the status quo, but if the president, the Congress and local governments do not support that decision, very unlikely this order will be obeyed.

Therefore, the judicial decision should obtain the support of these three groups to generate impacts. Sometimes, it can happen that the president act according to the court order, however, the Congress can override the decision, telling the courts they misinterpreted the law. Similarly, the Congress can compel with the judges' decision but the president and local governments might offer resistance to implement the law. It is not enough to gain the support of one of these actors, at least, it is necessary the support of two of them.

One way to overcome this constraint is creating the perception on politicians that this judicial decision will benefit their political career. Many political scientists agree that political actors engage in activities that facilitate the maximization of their re-election probabilities. Thus, the public positions must provide benefits to the relevant constituent interests. If a politician fails in achieving this, then he is electorally vulnerable. That is, a competitor will succeed when he has failed. Therefore, the electoral imperative provides the basis for the preferences of politicians over policy outcomes (Marks, 2012: 849). In this sense, to overcome the second

constrain it is necessary that politicians perceive that the judicial decision will give them electoral benefits. If politicians perceive that the court order will benefit them in their political career they will support and implement the order and only in this way the judicial decision will have a direct impact in the political regime. So, we have the second constrain and the condition to overcome it.

- Constraint II: Political elite
  - Overcoming Constraint II: Perception on politicians that the court order will benefit them.

The third constraint is related to the opposition that can be presented within the society. The problem with progressive judicial decisions is that sometimes society might not support the ruling; therefore, this public feeling could influence the behavior of politicians. Elected authorities could disapprove the court order attending public opinion. Moreover, if the judgment goes against the values and culture of the society, it can cause mobilizations against the decision.

To generate an impact, judicial decisions should also obtain the support of society. This can be easily obtained if media and opinion leaders emphasize the positive aspects of the ruling and if the judgment benefit most of the population. In this sense we have our third condition.

- Constraint III: Opposition from society
  - Overcoming Constraint III: Existence of a positive discourse in media and the ruling benefit most of the members of society.

Another aspect that is also important to consider is the strength and strategies of interest groups. Powerful groups that feel that their interests have been damaged by the judicial decision will take several actions to stop the influence of the court. Therefore, a court decision can have little impact if these interest groups mobilize all their resources to reduce

the influence of the judgment. These groups are not limited to national actors, international players are also extremely important.

In this sense, litigants must join their forces with other influential groups to stop the interference of other interest actors. For example, in Latin America, some feminist organizations have won litigations related to women reproductive rights, however, the Catholic Church have taken a lot of actions to reduce the influence of these judicial decisions, for that reason feminist organizations have appealed to UN Women for help to enforce the court order. We can appreciate how important are interest groups and their strategies to make that court decisions can produce impacts in the political system. Saying this, we have our fourth constraint and condition to overcome it.

- Constraint IV: Strength and strategies of interest groups
  - Overcoming Constraint IV: Strategies implemented by litigants

Finally, the last constraint has to do with implementation. For courts to produce social reforms must have the ability to develop appropriate policies and the power to implement them (Rosenberg, 1991:15). Court decisions, requiring people to act, are not self-executing. Unlike Congress and the executive branch, courts are utterly dependent on the support of the other branches and elite actors (*Ibid*). Therefore, it is important to create strategies to enforce court orders.

Some strategies that can facilitate implementation are the following: 1) Positive incentives to induce compliance (Rosenberg, 1991:36). Courts can order to allocate more budget to those institutions and local governments that implement the judicial decision. 2) Imposition of costs to induce compliance (Rosenberg, 1991:36). Judges have the possibility to force institutions to pay a fine if they do not comply with the court decision. 3) Clear implementation paths. There is more probability that a court order will be implemented if rulings set broad goals and

clear implementation paths through deadlines and progress reports (Rodríguez-Garavito, 2011: 1676). And 4) the existence and nature of the court's monitoring (Rodríguez-Garavito, 2011: 1676). Impact is likely to be higher when courts engage in follow-up mechanisms – public hearings, court-appointed monitoring commissions, and invitations to civil society and government agencies to submit relevant information and participate in court-sponsored discussions (Rodríguez-Garavito, 2011: 1676). Therefore, we have the following:

- Constraint V: Implementation
  - Overcoming Constraint V:
    1. Positive incentives to induce compliance
    2. Imposition of costs to induce compliance
    3. Clear implementation paths
    4. Monitoring

The figure 3 summarizes the constraints that were explained in this section. However, it is important to notice that judicial decisions are able to produce symbolic effects and agenda setting when litigants overcome the first constraint, nevertheless, are incapable of generating other kind of impacts unless they overcome the other four constraints. So, the more constraints litigants overcome, the more impact the judicial decision will have.



Figure 3. Constraints and helpers to overcome them

Proclivity of tribunals to favor the status quo	<ul style="list-style-type: none"> <li>• The existence of ample precedent for change.</li> </ul>
Political elite	<ul style="list-style-type: none"> <li>• Perception on politicians that the court order will benefit them.</li> </ul>
Opposition from society	<ul style="list-style-type: none"> <li>• Existence of a positive discourse in media and the ruling benefit most of the members of society.</li> </ul>
Strength and strategies of interest groups	<ul style="list-style-type: none"> <li>• Strategies implemented by litigants</li> </ul>
Implementation	<ul style="list-style-type: none"> <li>• Positive incentives to induce compliance</li> <li>• Imposition of costs to induce compliance</li> <li>• Clear implementation paths</li> <li>• Monitoring</li> </ul>

Source: Own elaboration

## Chapter 3

# The case of Marihuana Legalization in Mexico

### Brief Context

Since 1920, the consumption, transportation, production, traffic, possession and other activity related to Cannabis have been illegal in Mexico. An exception was made on 21 August 2009 when the government decriminalized the possession of small amounts of cannabis and other drugs in order to reduce the illicit drug activity (Wilkinson & Richard, 2009).

However, the topic about drugs have earned a lot of importance in the last years in the country due to the security policy that the two last governments have implemented to finish with drug cartels. This policy, known as “the war on drugs”, has generated thousand of deaths and, paradoxically, has increased insecurity in Mexico (Lakhani, 2016).

In this context it was when the president in turn, Enrique Peña Nieto, published in the Federal Official Gazette a law that legalizes cannabis-based substances for medicinal and scientific purposes (DOF, 2017).

In Mexico, it was said that this last reform was approved thanks to the 2015 Supreme Court ruling, which allowed four individuals from the Mexican Society for Responsible and Tolerant Personal Use (SMART) to consume Marihuana for recreational use (Valdivia-García, 2016). This section will analyze what kind of effects this ruling had on the Mexican political system and we will see if thanks to this judgment the Mexican government approved the legalization of Cannabis for medical purposes, but first we will explain what does the ruling consist in.

## A controversial ruling

On 31 May 2013, four members of the Mexican organization SMART requested to The Federal Commission for the Protection against Sanitary Risk (COFEPRIS) an authorization to consume Marihuana for recreational purposes (Conesa, 2016). The federal institution denied the request and the four petitioners went to the Supreme Court and presented a writ of amparo (Conesa, 2016). They made the same request to the judges: the authorization to sow, produce and consume Marihuana for recreational purposes. The litigants argued that the prohibition of consuming this substance violated his right to the free development of personality (Conesa, 2016).

With four votes in favor and one against, on November 2015 the judges of the Supreme Court ruled in favor of the litigants (Conesa, 2016). The 237/2014 judgment<sup>2</sup> was historical because it authorized the four litigants to possess, sow, raise, prepare, transport and consume Cannabis for recreational purposes. The ruling also declared unconstitutional the articles 233, 237, 245, 247 and 248 of the General Health Law, which regulated the allowed activities related to this substance. Nevertheless, the document clearly specified that the judgment only applied to the litigants, it did not apply to third parties. Moreover, it also indicated that the four requesters could not traffic or commercialize the drug and they could not consume it in public.

This ruling caused a lot of disturbance in Mexico, especially because Marihuana have been illegal since 1920 and most of the population is against the legalization of this substance (Valdivia-García, 2016). For that reason, it is important to ask what kind of effects does this court decision generate in Mexico? What consequences does it produce? Does this ruling bring about a social reform in the country?

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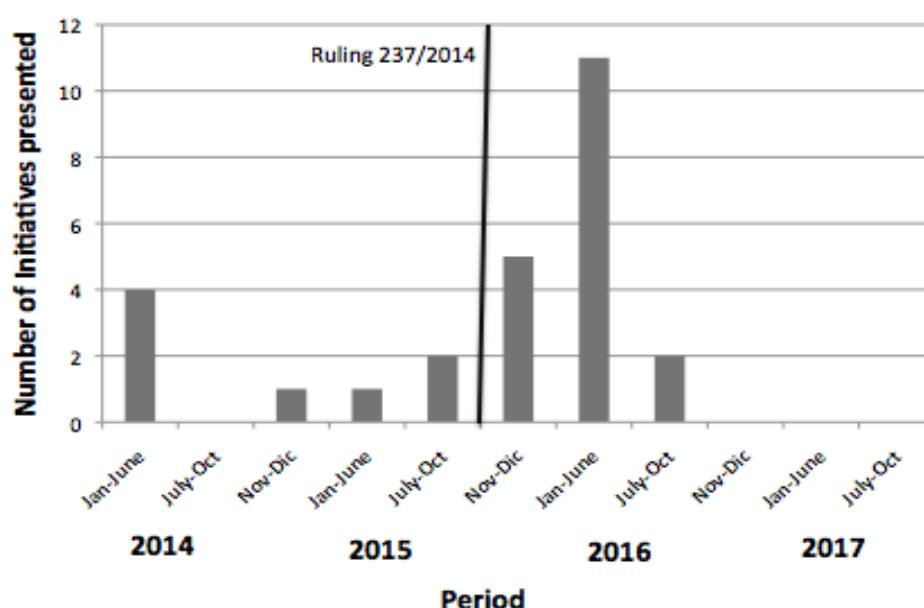
<sup>2</sup> The complete ruling is available in the next web site. Accessed on 8 June 2018: <http://www.estevez.org.mx/wp-content/uploads/2016/05/14002370-002-2780-2.pdf>

## The effects of the ruling

As it was said, judicial decisions can produce four kinds of effects: direct impacts, institutional impacts, collective action effects and symbolic effects. Lets first to analyze the direct impacts. The first immediate effect that the 237/2014 ruling produced in Mexico was the authorization to the four litigants to consume Cannabis for recreational consumption. On 7 December 2015, the COFEPRIS was notified about the court order and the institution gave to the four petitioners an authorization to consume Cannabis without being bothered by public authorities (Valdivia-García, 2016: 155).

Another direct impact that this judicial decision produced was the presentation of initiatives in the National Congress related to Cannabis legalization. After the 237/2014 ruling the number of projects related to Marihuana consumption increased in the chambers of deputies and senators, although the number decrease to zero in 2017 (see figure 4). However, it is important to mention that many of these initiatives were presented to brake and moderate the decision taken by the Supreme Court.

Figure 4. Number of initiatives presented in the National Congress related to Cannabis legalization.



Source: Own elaboration with data from the web site of the Legislative Information System. Access date 08 June 2018: <http://sil.gobernacion.gob.mx/portal>.

The initiative that attracted most of the attention was the project presented by the president Enrique Peña Nieto. On April 2016 he sent to the Congress a proposal to legalize cannabis-based products for medical purposes. He sent this initiative to moderate the decision taken by the court (Valdivia-García, 2016). As it will be explained later, this initiative was approved on 2017.

The judicial decision was the inspiration of these initiatives for many reasons. First, because despite the fact that some of these projects did not support Marihuana legalization for recreational use as the judicial decision did, many political actors, after the verdict of the court, felt under pressure to discuss the problem of Cannabis consumption. As the president of the Chamber of Deputies, Jesús Zambrano, affirmed: “the constitutional interpretation about Marihuana consumption made by the Supreme Court obliged the Congress to discuss

the issue” (Alcántara & Jiménez, 2015). The president Peña Nieto thought the same. In a press conference its spokesman said, “the resolution of the Supreme Court led us to create a better regulation about Cannabis substances” (Valdivia-García, 2016:153).

Second, because these projects made reference to the 237/2014 ruling and in some initiatives the words of the judges were used to elaborate the documents. For example, in the project presented by the Senator Cristina Díaz the ruling of the Supreme Court is quoted, it can be found: “the amparo that the Supreme Court gave to the four members of SMART demonstrates the relevance and interest of the topic” (Díaz, 2015: 11). The same occurred with the initiatives of the senators Angélica de la Peña, Roberto Gil, Agélica Tagle, among others.

Moreover, when the Senate of Mexico was discussing the project related to Marihuana Consumption, all the senators that passed to the stand to support the complete legalization of Cannabis quoted the ruling 237/2014 (Valdivia-García, 2016:152). The same happened on the Chamber of deputies. Therefore, we can see that the judicial decision had a real impact in the legislative process.

The third direct effect that the judicial decision on Marihuana consumption caused in Mexico was the approval of a law that allows the use of Cannabis-substances for medical purposes only. On 19 June 2017, president Enrique Peña Nieto published a bill that authorizes cultivation and production of Marihuana plants for medical and scientific purposes. The law also establishes that industrial products with concentrations of 1 percent THC or less would be legal to buy, sell, import and export in the country. This law was an outcome of the 237/2014 ruling because this project was the initiative that the president sent to the Congress in response to the judicial decision (Valdivia-García, 2016).

Nevertheless, it is important to note that this law differs a lot from the judgment made by the Court. While the judiciary advocated the complete legalization of Marihuana, the new law only allows it for medical purposes. This shows that although the Supreme Court had a lot of influence in the legislative process of the new law, it did not have power to affect the final outcome because other forces had more weight in the legislators' decision.

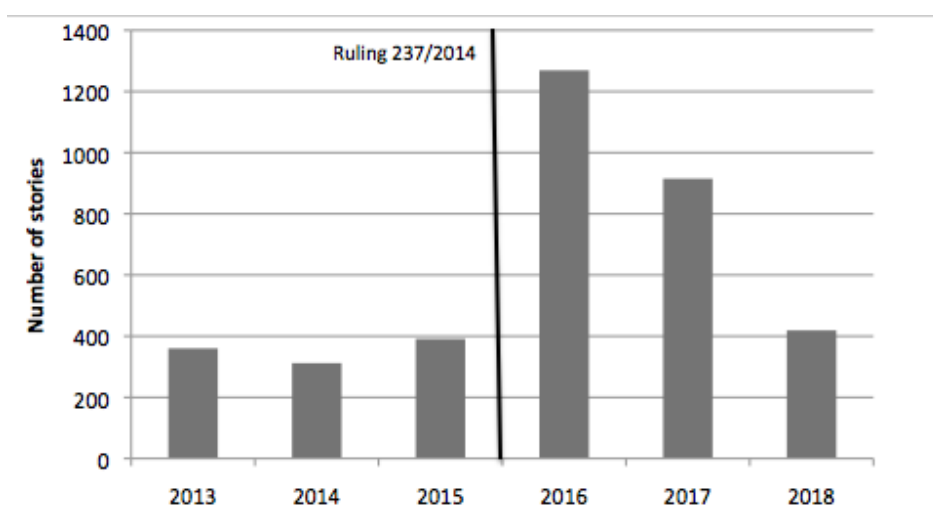
Finally, talking about the benefits that the judicial decision produced to Cannabis users, judicial decision does not generate any change because consuming Marihuana for recreational purposes remain illegal in Mexico. If users want to consume Cannabis they should obtain an authorization from the COFEPRIS. However, the institution has declared that it has denied most of the applications, in spite of the fact that the number of applications has increased 22% from 2015 to 2017 (Villa, 2017). The only groups that were benefited from the new law are some industries, pharmacies, universities and some patients that will be able to acquire the drug, however, there is no data about this since the law will become effective on august of this year (Villa, 2017).

To sum up, the 237/2014 ruling produced only 3 direct impacts: the presentation and discussion of initiatives about Marihuana legalization; the design of a policy to deal with Marihuana consumption in Mexico; and the court order that allows to four persons the consumption of Cannabis for recreational purposes. Nevertheless, it is important to say that the court order did not have the power to legalize Marihuana in the country as the ruling authorized.

Regarding to the symbolic effects that the ruling generated, the first thing that stands out is that the judgment put Marihuana consumption on the agenda. The 237/2014 ruling launched the public debate over Cannabis legalization. This can be demonstrated by press coverage. After reviewing the three most popular newspapers in Mexico (*El Universal*, *La Jornada* and

*Reforma*), it can be appreciated that the stories related with Cannabis legalization covered by these newspapers increased considerably after the judicial decision. In effect, before the ruling, around 400 stories were covered in average by year, however, after the judgment, the number raised to more than 1,000 (see figure 5). Therefore, an important contribution that the ruling made was the creation of public opinion about the issue.

Figure 5. Press coverage of Marihuana legalization 2013-2018



Source: Own elaboration with data from El Universal, access on 08 June 2018: <http://www.eluniversal.com.mx/>. La Jornada, access on 08 June 2018: <http://www.jornada.unam.mx/2018/06/08/>. Reforma, access on 08 June 2018: <https://www.reforma.com/>

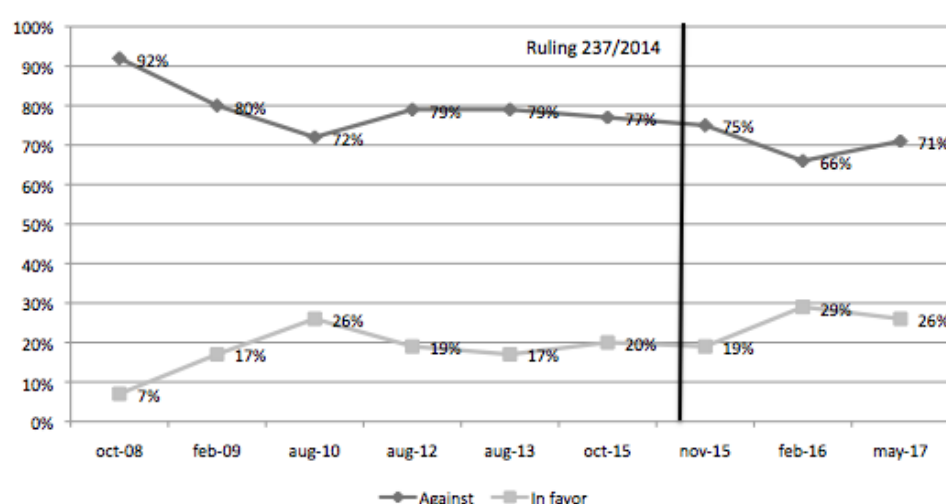
Another effect that this judicial decision generated on the press was the reframing of the issue. If we read the stories related with Marihuana consumption that appeared in 2013 it can be seen that most of them criminalized people that smoked Marihuana, however, after the judicial decision the three newspapers began to frame it as a right to the free development of personality. Therefore, we can appreciate that the judicial decision has the power to reframe the issue under consideration.

However, it is important to ask if the reframing of the stories and the press coverage modified the public opinion of Mexican society. Does Mexican society started to support legalization



of Cannabis after this judgment? The surveys related to Cannabis legalization for recreational purposes did not modify substantially that opinion. Before the court order, 77% of population was against a complete legalization of Marihuana in Mexico and after the court decision it decrease to 75% (see figure 6). It can be seen that there is not a great modification. The change came on February 2016 when the president Peña Nieto organized a National Debate on Canabis. In the frame of that debate the number of people that was against Cannabis legalization decrease to 66%, however, to May 2017 it raise again to 71%.

Figure 6. National survey about Marihuana legalization 2008-2017



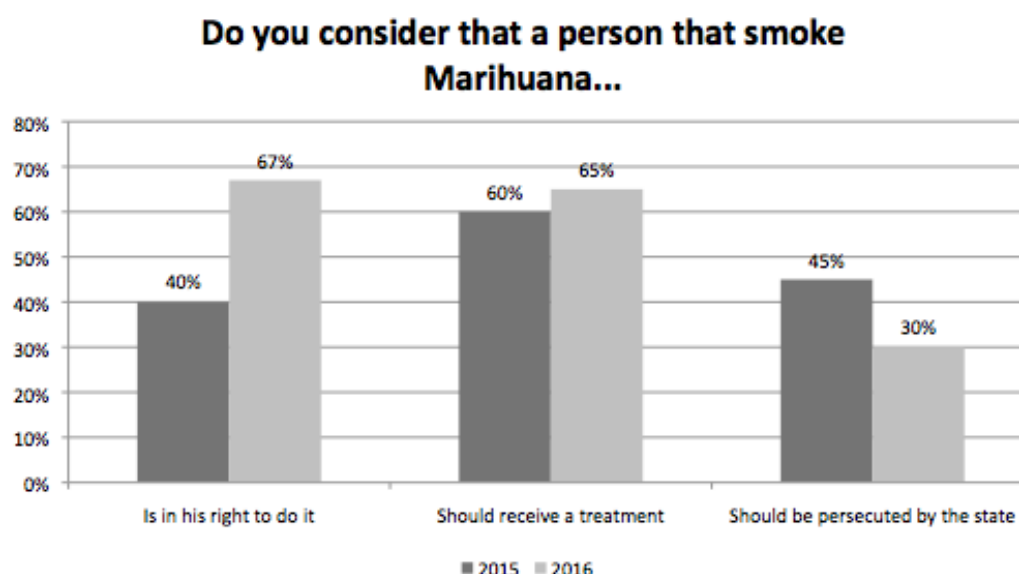
Source: (Parametría, 2017)

What does these numbers tell us? That in general, the judicial decision only modified the public opinion momentarily because after the effervescence that it caused things got back to normal. As it will be explained later, other forces intervened to change the public opinion again, among these forces are the International Narcotics Control Board (INCB) that opposed completely to the legalization of Marihuana in Mexico.

However, what about the effects that the ruling produced on the victims groups, that is, on people that consume Marihuana. Did this ruling change how consumers perceive themselves? Or at least, did this ruling change the perception that people have over them? We can affirm that the judicial decision really had a symbolic effect in this issue because both consumers and society changed their perception about people that consume Marihuana. For example, according to the National Survey elaborated by the Mexican Congress (CESOP, 2016), in 2015, 73% of the population said that they did not trust on people that smoked Marihuana, however, in 2016, after the 237/2014 ruling this number decrease to 60%. Moreover, when they were asked if consumers of Marihuana should be criminalized, 45% of people gave a positive answer in 2015 but in 2016, after the ruling, this number decreased to 30% (see figure 7). Therefore, it can be seen that the Supreme Court has the power to change the perception that population have over the group under consideration.

Figure 7. Opinion about Cannabis Consumers in Mexico

(National Survey CESOP)



Source: Own elaboration with data from *Centro de Estudios Social y Opinión Pública (CESOP)* Access on 08 June 2018. Available at: <http://www5.diputados.gob.mx/index.php/camara/Centros-de-Estudio/CESOP>

In conclusion, the judicial decision about Marihuana legalization generate public opinion on Mexican society, reframed the issue on newspapers, and changed the perception that people had over consumers. However, it was unable to change the opinion about the complete legalization of Cannabis in Mexico.

In relation with the collective action effects, the 237/2014 ruling accomplished to generate a collective search for solutions to the problem of Marihuana in Mexico. On 2 December 2015, one month after the ruling, the Ministry of Security, Miguel Ángel Osorio Chong, informed that in the third week of 2016 the government would open the National Debate on Marihuana Use (Valdivia-García, 2016). This forum, that lasted five weeks, was a complete success since many groups from civil society participated in it: academics, researches, health professionals, public authorities, members of religious associations, NGOs, policymakers,

specialists, international figures, everybody took part in this debate. The forum was organized with the aim to discuss possible alternatives to the current drug paradigm, which focus only in security issues without considering the human rights of Cannabis users. Never before Mexico had immersed on a debate about Cannabis legalization as it did in that year.

The 237/2014 court order was the caused of the organization of this debate because at the conclusion of the forum, the president Peña Nieto said the following:

“Related to the topic that today we discussed, I would like to thanks to everybody for your presence, [...] as I have expressed, it was after the decision of the Supreme Court about the use of Marihuana for recreational purposes that I decided to organize this National Debate [...]”  
(Peña Nieto, 2016. Own traduction).

It can bee seen that this judicial decision had the power to generate a collective search for solutions to the problem of Marihuana in Mexico. However, what this decision could not produce was the emergence of new movements in the political arena. As it will be explained later, one of the great effects that the judicial decision related to same-marriages produced in Mexico was the emergence of new movements to defend the cause; nevertheless, in the case of Marihuana legalization, it was not possible to identify the creation of a new movement to demand the complete legalization of the drug. All the associations that participated in the debate were created before the judicial decision.

Finally, related to the institutional impacts, that the judicial decision under consideration did not have the capacity to produce this kind of effects. Although the ministries of Health, Security, Finance and Development organized the National Debate on Marihuana, these institutions were not able to cooperate to face the problem of Marihuana consumption and to create a program to reduce this situation in the country. Actually, the public policies that were approved in the new law will be implemented separately by each institution.

In conclusion, the 237/2014 ruling only accomplished to produce the following effects:

Figure 8. Effects that the 237/2014 ruling produced in Mexico

<b>Direct Impacts</b>	<b>Institutional Impacts</b>
Agenda Setting Presentation and discussion of initiatives Legalization of Marihuana for medical purposes	X
<b>Collective action effects</b>	<b>Symbolic effects</b>
Organization of National Debate for Marihuana Use	Press coverage Reframing the issue Change of perception over consumers

Source: Own elaboration.

The previous chart shows that there are some impacts that the ruling could not generate. For example, the Supreme Court did not have the influence to legalize Marihuana for recreational use. Moreover, it did not bring benefits to the people that consume Cannabis for recreational purposes. In addition, it did not produce institutional impacts as in the case of Colombia described by Rodríguez-Garavito (2011). The court order neither changed the public opinion about the legalization of all cannabis-based substances. Finally, it did not achieve to create new movements to defend the decision.

In general the court order only achieved to create public opinion and, most importantly, set the issue in the agenda of the government. But it did not achieved to legalize Marihuana in the country neither created a great social change. Therefore, it is important to ask why this happened? Why the judicial decision had the power to create public opinion but it did not achieve to produce a social change? The next section will give an explanation.

## Constraints, conditions and the 237/2014 ruling

There are five constraints that impede judicial decisions to produce important effects in Mexico, these are: the proclivity of tribunals to favor the status quo, opposition from the political elite and society and implementation. Regarding to the first constraint, this was overcome because there was an ample legal precedent for change. In some countries, such as Argentina(Parasso, 2009), Colombia (Salazar, 2009) and Uruguay (Colombo, 2017), courts and governments had already decriminalized the use of Cannabis for recreational purposes. Therefore, the Mexican Supreme Court already had antecedents to decriminalize the use of Marihuana.

The second constraint –the political elite- was not overcome, for that reason, and among other things, the judicial decision was unable to legalize Marihuana for recreational use. It is true that after the judicial decision the number of initiatives related to Cannabis consumption increased in the Congress, however, as it was said, many of these initiatives were presented to moderate the decision of the Supreme Court.

Many politicians put resistance to the court order; one of them was the president Peña Nieto. After the court decision, in a press conference he said: “I have clearly expressed that I am against the consumption of Marihuana for recreational use, because the consumption of this drug is harmful for young people” (Presidencia de la República, 2015). Several governors also expressed their opposition; actually, of the 32 governors only 3 expressed its support to the judicial decision (El Universal, 2015). Moreover, the two parliamentary groups that had the majority in the congress, PRI and PAN, also opposed to the complete legalization of Marihuana (Guzmán, 2015).

This lack of support impeded that the 237/2014 ruling turned into a law. Therefore, it is possible to affirm that in this case, the Supreme Court pushed politicians to discuss the issue but could not influence the final outcome of that process; there were other forces that had most influence in that final decision. What were these forces? Why politicians did not perceive that the legalization of Marihuana would bring them benefits?

The answer to those questions leads us to the third constraint, which is opposition among society. Although the judicial decision changed the perception that Mexicans have over cannabis consumers, it did not accomplished to convinced population to support Marihuana legalization. Actually, 60% of Mexicans said that they were against the decision taken by the Supreme Court (Beltrán & Cruz, 2015). Moreover, as I said, around 70% of Mexicans are against the complete legalization of Cannabis. For that reason I consider that politicians did not support the court order, because observing the opposition that this issue generate among Mexican society, they perceived that supporting the ruling would harm its political career.

Moreover we also take into account the strength and strategies that other interest groups implemented. For example, just after the court order, the Catholic Church -one of the most important institutions in Mexico, since around 80% of Mexicans are Catholics- pronounced against the judicial decision. On a popular catholic newspaper, the archbishop of Mexico wrote: “the decision taken by the court demonstrated the crisis of a degenerated system that is rooted in a death culture” (Valdivia-García, 2016: 151). However, it is important to say that the Catholic Church is not against the legalization of Cannabis for medical and scientific purposes. When the archbishop was asked about its opinion of the initiative presented by Peña Nieto he replied: “the church never had refused the idea to use a natural substance to the health and dignification of a person” (*Ibidem*). This group had a great influence in the opinion of population, for that reason the Congress only approved the legalization of Marihuana for

Medical purposes. Moreover, it should be said that the International Narcotics Control Board of United Nations also expressed its opposition, in a statement this institutions said that “Mexico will violate international treaties if legalizes Cannabis” (Otero, 2014).

Finally, the last constraint is related to implementation. However, as the Congress never passed legislation to legalized Marihuana for recreational use, it is not possible to analyze this constraint. The next figure summarizes the constraints that the 237/2014 ruling could and could not overcome.

Figure 9. Constraints that the judicial decision related to Marihuana overcame

Constraints that were overcame	Constraints that were NOT overcame
Proclivity of tribunals to favor the status quo	Political Elite Opposition among society Strengths and strategies of interest groups

Source: Own elaboration

In conclusion, in the case of Marihuana legalization, the Mexican Supreme Court could only set the issue in the agenda of the government and created public opinion but it could not produce other effects because it did not overcome the second, third and fourth constraints.



## Chapter 4

### The case of Marihuana Legalization in Mexico

#### **Brief Context**

Mexico always has been a conservative nation. Around 80% of the population consider themselves as Catholics (ECREER/RIFREM, 2016). Therefore, the Mexican Constitution and the Federal Civil Code have only recognized the families that are constituted by a man and a woman. Nevertheless, these values have been challenged in the last decades by libertarian organizations, more specifically, by feminists and LGBT groups. Members of these organizations have begun to demand the recognition of their rights, including the right to marry.

However, this battle has not been easy, they have faced multiple obstacles to obtain that recognition, especially the opposition from conservative and religious groups. But they have won important battles, for example, on 4 March 2010 the Legislative Assembly of Mexico City legalized same-sex marriage in the capital (Expansion, 2009). They have tried to earn this status in other parts of the country, but it has been more difficult due to the conservatism of the other states. For that reason, same-sex couples from other jurisdictions have turned to the court to be able to get married.

Through this last path feminists and LGBT groups have had more achievements, since several couples have obtained from the court the right to get married in their states (Castellanos, 2017). These rulings are very important because thanks to them on June 2015 the Mexican Supreme Court ruled a “jurisprudential thesis” that establishes that same-sex marriage bans are unconstitutional (Castellanos, 2017).

This jurisprudence has been very important in Mexico since it has caused a lot of disturbance in the country, especially because it woke up the anger and opposition of conservative and religious groups (Salinas, 2017). For that reason it is important to analyze what kind of effects this jurisprudence has produced in the country.

## **Equality, diversity and the jurisprudence 43/2015**

In Mexico, the Supreme Court may rule jurisprudence by upholding the same point of law in five consecutive judgments (Alvarado, 2013). On 12 June 2015, after five rulings that determined that bans on same-sex marriage were unconstitutional<sup>3</sup>, the Supreme Court elaborated the jurisprudence number 43/2015 where established the unconstitutionality of the laws that ban same-sex marriage on states (Semanario Judicial de la Federación, 2015). The jurisprudential thesis did not invalidate any state laws; the jurisprudence only standardized the procedures for judges and courts throughout Mexico to approve all applications for same-sex marriages and made the approval mandatory. This means that same-sex couples denied the right to wed would still have to seek individual injunctions. The ruling was published in the country's Judicial Gazette on 19 June 2015 and became binding on 22 June 2015 (Semanario Judicial de la Federación, 2015).

This ruling caused a lot of opposition in the country but at the same time it received the ovation of various human right organizations, which said that this decision would change the precarious situation of homosexuals (Salinas, 2017). However, to what extent does this was true? This is, did this judicial decision produce a social reform in the country? What kind of effects did it generate?

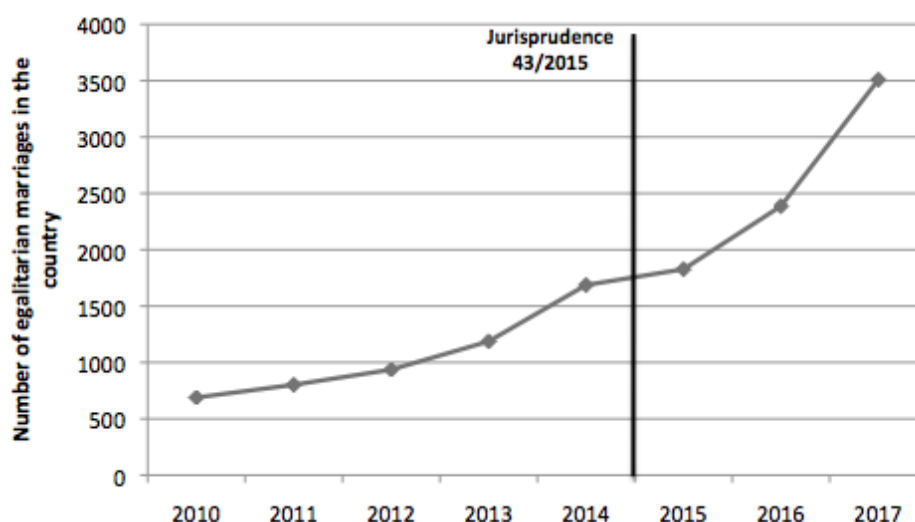
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<sup>3</sup> The judgements are: 152/2013; 122/2014; 263/2014; 591/2014 and 704/2014.

## The effects of the ruling

The first direct impact that this judicial decision produced was that it obliged all courts to approve all applications for same-sex marriages and made the approval mandatory. This is very important because since the announcement of the jurisprudence, local courts from several states have been ruled 53 judgments that allow same-sex couples to get married (Consejo de la Judicatura Federal, 2018). Actually, thanks to this, the number of egalitarian marriages increased more than 320% from 2015 to 2017 in the country (see figure 10).

Figure 10. Number of same-sex marriages in Mexico (2010-2017)



Source: Own elaboration with data from the web site of the Instituto Nacional de Geografía y Estadística (INEGI). Accessed on 5/June/2018:

[http://www.inegi.org.mx/sistemas/olap/Proyectos/bd/continuas/nupcialidad/Matrimonios.asp?s=est&c=12239&proy=matrim\\_mat](http://www.inegi.org.mx/sistemas/olap/Proyectos/bd/continuas/nupcialidad/Matrimonios.asp?s=est&c=12239&proy=matrim_mat)

Therefore, it is possible to appreciate that the jurisprudential thesis really had a direct impact in Mexico and brought some benefits to homosexual groups. Another direct impact that it created was that it motivated the president Peña Nieto to present an initiative to Congress to recognize egalitarian marriages. On 17 May 2016, in the frame of the International Day Against Homophobia, the president submitted a proposal to legalize gay marriage nationwide

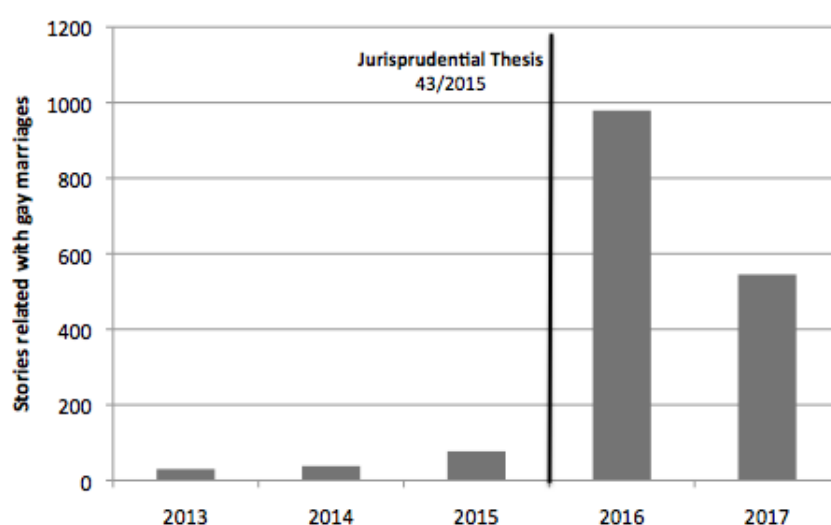
(Vela, 2016). In the explanatory statement the president refers to the jurisprudential thesis and claims: “Egalitarian Marriages should be legalized [...] because the National Supreme Court has established that bans on same-sex marriage are unconstitutional” (Presidencia de la República, 2016). However, it is important to mention that this initiative never was approved in the Congress.

This judicial decision also produced eco on some local governments. After the court order, 8 Mexican states authorized gay marriages in their constitutions, these states were: Campeche, Chihuahua, Colima, Coahuila, Michoacán, Morelos, Nayarit and Quintana Roo (Salinas, 2017).

Nevertheless, this judicial decision could not produce other direct impacts in the political system. The main reason was that this court order generated a lot of opposition from society.

Regarding with the symbolic effects, the jurisprudential thesis achieved to create public opinion about the issue because after the judicial decision the number of stories related to gay marriages increased considerably. Making a review of the three most popular newspapers in Mexico (*El Universal*, *La Jornada* and *Reforma*), it is possible to find that the press coverage on same-sex marriages pass from 30 to more than 900 stories in three years.

Figure 11. Press coverage on Same-sex Marriages 2013-2017

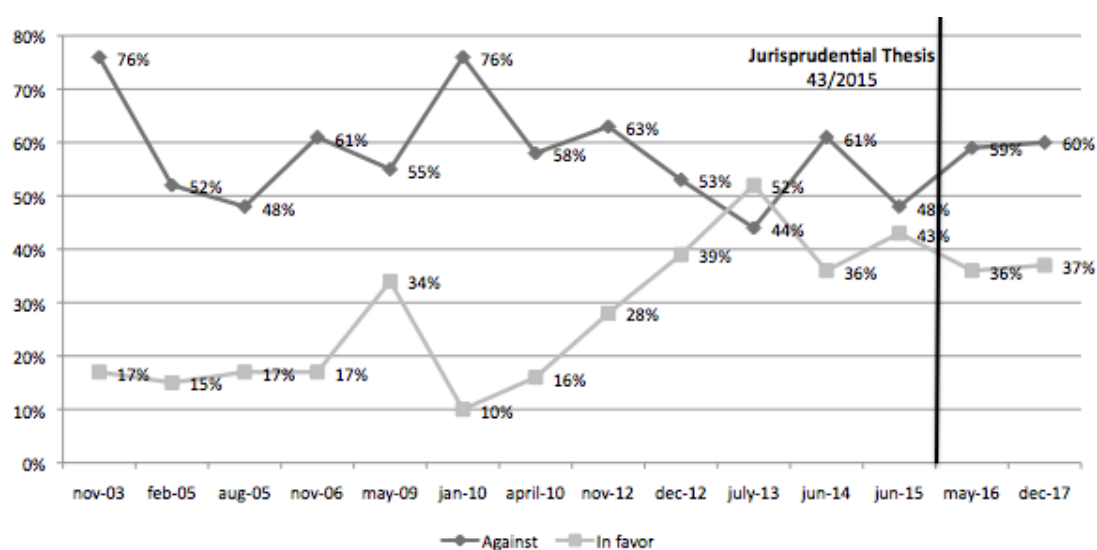


Source: Own elaboration with data from El Universal (<http://www.eluniversal.com.mx/>), La Jornada (<http://www.jornada.unam.mx/ultimas>) and Reforma (<https://www.reforma.com/>).

This press coverage was also important because it reframed the way these newspapers cover the issue under consideration. If we read the stories related to gay marriages that appeared in these three newspapers, it can be appreciated that after the judicial decision media took the words used by judges to defend this kind of unions. They described them as a human right issue. So, the court order produced important symbolic effects.

However, it is important to ask if this reframing and press coverage modified public opinion. If we observe the surveys related to same-sex marriages, it is possible to find that the judicial decision did not achieve to increase the support towards gay marriages. In fact, the opposite happened. Just after the court order, opposition towards same-sex marriages increased (see figure 12). This was due to the strategies implemented by religious and conservative groups.

Figure 12. National Survey about Same-Sex Marriages



Source: Own elaboration with data from the web site of *Parametria*. Accessed on 5/June/2018:  
(<http://www.parametria.com.mx/> )

However, to what extent did this judicial decision modify the perception that Mexicans had over homosexuals? Could this court order create a better view towards them? In this aspect, the jurisprudence thesis really changed the perception that Mexican had over homosexuals. This can be demonstrated through the National Survey *Encuesta Nacional sobre Matrimonio Igualitario* (2016), carried out by the Centre for Public Opinion Research (CESOP) where interviewees were asked if they considered homosexuality as a disease, in 2014 31% answered positively but in 2016, after the judicial decision, this percentage decreased to 9%. The jurisprudence number 43/2015 was the caused of this change because in that document judges placed homosexuals in the same status as heterosexuals.

Now, with regard to collective action effects, the jurisprudential thesis emitted by the Supreme Court generated the emergence of new movements and increased the intervention of new actors in the debate. For example, in the first months of 2016 two national movements

were created to promote the rights of LGBT groups (Salinas, 2017). The first one was *Moviimx*, *Movimiento por la igualdad y la inclusion* (Movement for inclusion and equality), and the second one was *Fonmx*, *Frente Orgullo Nacional* (National Pride Front). The first one is a moderate group that wants to promote legal reforms to protect LGBT rights. In contrast, the second movement is more radical and implements confrontative strategies to build a secular state (Salinas, 2017:101). In a press conference, leaders of these two movements said that the jurisprudential thesis inspire them to create these groups (Salinas, 2017:102).

As it will be explained later, this judicial decision also produced the emergence of conservative movements that fight for the conservation of traditional families. These movements have been decisive because they had exercise a lot of influence in Mexican society.

Finally, regarding with institutional impacts, the 43/2015 jurisprudential thesis achieved to coordinate courts to emit similar rulings with cases related to same-sex marriages. This was very important since numerous local courts were reluctant to allow homosexual couples to get married, especially in those states were are more conservative.

The next figure summarizes all the effects that the 43/2015 jurisprudential thesis generated in Mexico.

Figure 13. Effects that the 43/2015 jurisprudential thesis produced on Mexico

<b>Direct Impacts</b>	<b>Institutional Impacts</b>
Agenda Setting Presentation of initiatives Approval of gay marriages in 8 of 32 states Increase of same-sex marriages in the country	Coordination among courts
<b>Collective action effects</b>	<b>Symbolic effects</b>
Emergence of the following movements: Moviimx Fonmx National Front for the Family (conservative movement)	Press coverage Reframing the issue Change of perception over homosexuals

Source: Own elaboration

The previous figure tells us that the 43/2015 jurisprudential thesis produced four kinds of effects in Mexico. It generated press coverage, reframing of the issue, agenda setting, emergence of new movements and the legalization of same-sex marriages in 8 states. It is possible to appreciate that this judicial decision produced more local than national effects in comparison to the Marihuana case, as it will be demonstrated later, this was due to the fact that in some states the judicial decision achieved to overcome the opposition from political elite and society. For that reason it produced more effects in local scopes.

However, this judicial decision did not accomplish to generate national effects, it neither achieved to open a discussion in the Congress. The main reason of this is because it will face a lot of opposition from political elite, society and interest groups. But as it happened with Marihuana legalization, the judicial decision about same-sex marriages also achieved to create public opinion about the issue, but interest and conservative groups implemented strategies to shape this public opinion. In the next section it will be explained this in depth.



## Constraints, conditions and the 43/2015 jurisprudential thesis

The first constraint that the 43/2015 jurisprudential thesis overcame was the proclivity of tribunals to favor the status quo. This was possible because before this judicial decision there was an ample legal precedent for change, which is the condition to turn over the first constraint. Before the 43/2015 judicial decision, in many parts of the world, the recognition of same-sex marriages by tribunals was broad. Gay marriages had already been performed legally in Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2009), Sweden (2009), etc (Pew Research Center , 2017). Moreover, in Mexico four courts ruled in favor of same-sex marriages in 2014 (Castellanos, 2017). Therefore, there was an ample precedent for change, which is necessary to change the proclivity of tribunals to favor the status quo.

The second, third and fourth constraint are related to opposition from political elite, society and interest groups. It is better to start with the last one (strategies and strength of interest groups) because it is very important and it affected the third and second constraint.

The judicial decision about same-sex marriages woke up the anger of the most conservative and religious groups of the country (Salinas, 2017). This is due to the fact that it challenged one of the most rooted, unshakable and strong institutions in Mexico: the traditional family. For that reason, after the 43/2015 jurisprudential thesis was announced, the conservative and religious advocacy groups began to carry out several activities to stop the influence of this judicial decision (Salinas, 2017). The most important was the creation of the movement *El Frente Nacional por la Familia* (The National Front for the Family), which emerged as “a response of two events: the decision made by the Supreme Court on June 2015 and the

initiative presented by the President Peña Nieto which allows across the country gay marriages” (Frente Nacional por la Familia, 2016).

This movement has been extremely important in Mexico because it has brought all conservative and religious groups together, from Evangelists, Jews and Christians to Catholics and conservative businessmen (Salinas, 2017:100). Moreover, it also has carried out several pacific protests to demand the government to respect traditional families. The most important protest was organized on 10 September 2016, where more than 800,000 people march in favor of traditional families in more than 20 states of the country (Excelsior, 2016). These protests were financed by an important part of business sector, moreover, important members of political parties attended (Salinas, 2017). It is also important to say that the Pope Francis showed his support to these protests. In a dominical mass he said “I join to Mexican bishops and civil society which are showing their commitment with family and life” (Notimex, 2016).

In addition, the National Front for the Family has presented an initiative in the Congress to amend the fourth article of the Constitution to specify that a matrimony is made up by a heterosexual couple (Salinas, 2017: 101). But this movement has not stopped there; they also have attended to the 47 and 48 General Assembly of the Organization of American States (OAS), where have demanded the protection of traditional family in Latin America (Salinas, 2017).

It is not possible to say how much influence this movement has exercised in Mexico, but suffice is to say that more than 65% of population supports the ideas of this movement (El Universal, 2017). The reason of this lies in its strength and unity, this movement brings all religious groups together, which make it have more influence since 95% of Mexicans profess a religion (ECREER/RIFREM, 2016).

Moreover, LGBT and feminist groups have not achieved to counter the strategies and influence of this movement (Salinas, 2017). They tried to create a similar organization to defend same-sex marriages, however, they could not succeed because there have been deep ruptures in the inside of these groups (Salinas, 2017). The main cause of these fractures is that some members demand to carry out more confrontative actions while other members want to develop moderate strategies (Salinas, 2017). These antagonisms have been irreconcilable to the extent that they have created two different movements to defend same-sex marriages, which are: *Movimx* and *Fonmx*. However, this has resulted in the weakening of LGBT groups (Salinas, 2017:101).

This could explain why after the judicial decision the number of people against gay marriages had increased. It is possible to affirm that the weakness of LGBT groups and the strength and strategies implemented by conservative and religious leaders achieved to create a lot of opposition on Mexican society and in this way reduced the influence of the 43/2015 jurisprudential thesis.

This situation might have affected the behavior of national political elite. After observing this opposition they preferred not to support the cause of LGBT groups. Specially, after the events occurred in the 2016 local elections, where the party in the presidency, PRI, lost many local governments (Álvarez, 2016: 29). Some academics said that this was due to the corruption cases that have been present in its administrations (Álvarez, 2016: 30). However, some analysts also consider that the initiative about same-sex marriages presented by the president Peña Nieto affected negatively the party (Álvarez, 2016:31). With this antecedent it is understandable why deputies and senators did not open a discussion in the National Congress to debate gay marriages. Moreover, four states (Zacatecas, Guanajuato, Durango and

Hidalgo) rewrite the local constitution to specify that a marriage is between a man and a woman (Salinas, 2017: 104).

Nevertheless, there are many questions that are not answered by this explanation. First, why the president Peña Nieto decided to present an initiative to legalize same-sex marriages if this action would affect him politically. Second, why 7 states accomplished to recognize gay marriages in their constitutions. Finally, why after the opposition from society and interest groups, the number of marriages increased considerably in the last years.

Regarding to the first question, some argue that the initiative of the president was an opportunistic strategy to gain support and popularity (Álvarez, 2016). Enrique Peña Nieto has been the most unpopular president in the history of Mexico. Only 16% of Mexicans approve Peña Nieto's performance (Álvarez, 2016). Therefore, as Santiago Álvarez (2016) expresses, it is possible to think that Peña Nieto wanted to embrace LGBT rights to improve its popularity and to achieve recognition at international levels, nevertheless, the opposite happened.

In regard to the second question, Chávez (2017) argue that it was possible to legalize gay marriages in 7 states of Mexico due to the fact that their habitants are more liberal and the LGBT groups are more unite, which allow them to create strategies to reduce the influence of Catholic Church. This happened in Mexico City, Coahuila, Jalisco, Quintana Roo and Colima (Chávez, 2017). For that reason, in these states the judicial decision about same-sex marriages produced more effects.

Finally, gay marriages increased in the last two years in Mexico for two reasons. First, due to the fact that same-sex marriages were legalized in 7 states and, second, to the fact that the Supreme Court standardized the procedures for judges and courts throughout Mexico to approve all applications for same-sex marriages and made the approval mandatory.

Therefore, we can see that clear implementation paths allow judicial decisions to produce more effects in a political system.

The next figure summarizes the constraints that the 43/2015 ruling could and could not overcome.

Figure 14. Constraints that the judicial decision related to Same-sex Marriages overcame

Constraints that were overcome	Constraints that were NOT overcome
Proclivity of tribunals to favor the status quo  In 7 states political elite and opposition from society was overcome	Political Elite Opposition among society Strengths and strategies of interest groups

Source: Own elaboration.

In conclusion, in the case of Same-sex marriages, the Supreme Court achieved to produce public opinion about the issue however, it also generated negative effects, it created a national movement that is against gay marriages. This reduced the influence of the judicial decision at national level, however, due to the fact that this decision had eco in 7 states of Mexico and that the court standardized all applications for same-sex marriages, this increased the number of same-sex marriages in the country.

## Chapter 5

### Comparison among the cases

In the last two chapters were analyzed what kind of impacts the 237/2014 ruling and the 43/2015 resolution produced on the Mexican political system.

In the document was developed an analytical framework to see the kind of effects that court orders can produce. In that framework was indicated that judicial decisions might generate four impacts: direct, institutional, symbolic and collective action effects. It was also said that judicial decisions should overcome five constraints to produce all these effects and, in this way, create a social change. The five constraints are: the proclivity of tribunals to favor the status quo, political opposition, social opposition to reforms, strength and strategies of interest groups and implementation.

Comparing the two rulings, it was demonstrated that when the first constraint is overcome (the proclivity of tribunals to favor the status quo), judicial decisions are able to generate public opinion about the topic and set the issue in the governmental agenda. After the assessment of the two cases, it was observed that both the ruling 237/2014 and the jurisprudential thesis 43/2015 generated public opinion through press coverage. It also was possible to see that after the court order, the number of stories related to Marihuana and same-sex marriages increased in the most important newspapers of the country. The two judicial decisions also set the issues in the agenda of the government since the president sent an initiative about these topics.

In addition, when the first constraint is overcome it also produces collective action effects. For example, in the case of Marihuana consumption, it achieved to develop a national debate to discuss the pros and cons of Cannabis legalization in Mexico. In the case of same-sex marriage, the jurisprudential thesis caused the emergence of two movements (Movimex and Fonmx) that support the legalization of homosexual couples in the country.

However, it is important to notice that when the first constraint is overcome, judicial decisions are also able to produce contrary effects. That is, they can give rise to movements or public opinion against the ruling. This happened in the two cases that were analyzed here. The ruling related to Cannabis consumption woke up the opposition of political elite, it should be remembered that after the judgment 237/2014 the president, some deputies and senators presented in the Congress initiatives to moderate the decision of the Supreme Court. The same happened with the judicial decision related to same-sex marriages. This ruling gave rise to a huge conservative and religious movement that opposed to homosexual marriages.

This shows that when the first constraint is overcome, judicial decisions are able to produce public opinion, collective action effects and set the issue in the agenda of the government but at the same time they generate opposition and countermovements. Therefore, to produce a social reform or to have a real impact in the political system, judicial decisions and litigants should overcome the other four constraints.

In the case of the Cannabis ruling, it was demonstrated that litigants and the Supreme Court could not defeat political opposition, social opposition and interests groups. The ruling that allowed four people to consume Marihuana for recreational purposes woke up immediately the concern of several actors, including the Catholic Church, the International Narcotic Control Board and the right wing of political elite. Through several statements these actors showed its rejection to Marihuana legalization for recreational purposes. Due to the fact that

these actors have a considerably influence in Mexico, they achieved to moderate the decision of the Supreme Court. For that reason, in the end, cannabis-based substances were legalized for medical and scientific purposes only. However, it should be recognized that was the decision of the Supreme Court that pushed politicians to make that reform, therefore, it is easy to see the power that the Supreme Court has to set an issue in the governmental agenda.

The case of same-sex marriages is a little different because this court order produced different effects at national level and in local level. At national level, the jurisprudential thesis 43/2015, as in the Cannabis ruling, could not defeat political opposition, social opposition and interest groups. As it was said, this judicial decision produced a huge national movement that is against same-sex marriages, which influenced several politicians and Mexican society. For that reason, the National Congress never discussed the issue. Actually, the initiative that the president Peña Nieto sent to the Congress was turned down in commissions. Therefore, at national level, the 43/2015 judicial decision could not had other impact.

However, in local level this judicial decision produced more impacts. The court order accomplished to legalize same-sex marriages in eight states. This was due to the fact that in these states people are more liberal and the conservative movement had less influence. Moreover, LGBT groups in those states were more united, so, they had more strength to defend their rights. In this sense, it is possible to affirm that when social opposition and strategies of interest groups are counteract, judicial decision are able to generate more impacts.

Moreover, the Supreme Court dictated clear implementation paths in the jurisprudential thesis 43/2015. It ordered to all courts to approve all applications for same-sex marriages and made the approval mandatory. This, together with the eight states that legalized homosexual marriages, increased the number of same-sex marriages in the country. Therefore, I affirm



that when the Supreme Court dictates clear implementation paths it is possible to produce more direct impacts. Contrary to what happened with the Cannabis decision, the Supreme Court never ordered to legalize Marihuana, it only allowed four people to consume it. Therefore, this decision could not produce more direct impacts.

To sum up, judicial decisions in Mexico are able to generate public opinion, collective action effects and set the issue in the governmental agenda when litigants overcome the first constraint. However, when this constraint is overcome, judicial decisions also produce opposition and countermovements. For that reason, to be able to generate more impacts in the Mexican political system, court orders and litigants also should defeat four more constraints. The more constraints they overcome, the more impacts they can produce.

In the marihuana case, litigants were able to overcome only the first constraint, for that reason the Supreme Court could not achieve to generate a social change, that is, legalize Marihuana for recreational purposes in the country. In comparison, the judicial decision related to same-sex marriage could overcome more constraints at local level and for that reason achieve better results, but at national level the outcomes were extremely limit, if not nonexistent, because in that level they did not defeat any constraint.

# Conclusion

The main objective of this thesis was to answer what happens in Mexico to the judgments once they leave the courtroom? What kind of effects they produce? What accounts for the different levels of impact of judicial decisions?

In the beginning of this research, it was said that there are two views to answer these questions. The first perspective, the Constraint Court view, which is supported by Rosenberg (1991), argues that courts are not able to produce any impact because there are other factors that impede social changes. To the contrary, the second perspective, the Dynamic Court View that is supported by Rodríguez-Garavito (2011), claims that tribunals are able to foster social reforms because courts can create symbolic and indirect impacts.

This thesis gave arguments to support the second perspective because it was demonstrated that judicial decisions in Mexico are able to generate some impacts. For example, they can produce public opinion about the topic, change the perception that people have over the victims, inspire new actors to participate in the debate and set the issue in the governmental agenda.

However, Rodríguez-Garavito (2011) and the academics that have treated the topic in Mexico (Martínez, 2016; Ferrera, 2012 and Salinas, 2017) did not explain under what conditions these impacts are generated. The contribution of this thesis goes in this sense. It gave an explanation to understand under what circumstances these effects are produced.

During the entire thesis it was defended that court orders are able to generate a social change or produce huge impacts when litigants overcome five constraints. When the first constraint - the proclivity of tribunals to favor the status quo- is overcome it can produce some direct, symbolic and collective action effects. However, to produce more effects it should overcome

the other four constraints. So, the more constraints they overcome, the more impact they produce.

This explanation helps to understand better why distinct judicial decisions produce different levels of impacts, something that have been not explained in previous literature. Therefore, if litigants want to create a social change they should continue fighting after the ruling.

In conclusion, judicial decisions are able to produce a social change or to generate a huge impact in the political system as long as they overcome the constraints that impede court orders to have effects.

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