

CHALLENGING THE CENTRALIST DOCTRINE IN MEXICAN
FAMILY LAW: AN ANALYSIS OF THE EVOLUTION
OF STATE AUTHORITY OVER CIVIL LAW MATTERS
AND ITS IMPACT ON THE REGULATION
OF COHABITATION AND DIVORCE

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ABSTRACT. This article addresses the need for debate about the concepts of federalism, centralization, decentralization and sovereignty within the context of Mexican comparative and family law. Until recently, private law and family law scholars have generally dismissed the issue of federalism within Mexico, largely because of the belief that Mexico is not “really” federalist given its strong tendency toward political and legal centralism. Despite this preconception—and the fact that Mexico does have a highly centralized federal system—a deeper analysis shows that states and sub-national jurisdictions have played a critical role in shaping the contours of family law and influencing the state-federal relationship. This article argues that the centralist doctrine that so permeates scholarly works on private law in Mexico—if not addressed and revised both for the past and present—risks undermining attempts at understanding legal change and improving Mexican family law.

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KEY WORDS: *Federalism, decentralization, private law sovereignty, comparative law, family law.*

RESUMEN. *Este artículo es evidencia de la necesidad de situar debates de federalismo, descentralización, centralización y soberanía en el contexto de derecho comparado y derecho familiar. Hasta hace poco, académicos de derecho privado y familiar han desestimado la cuestión del federalismo. Esta desestimación se ha basado en la creencia generalizada de que en México no existe un verdadero federalismo dado el alto grado de centralismo político y jurídico que ha primado en el país. Sin embargo, un análisis más a fondo muestra que, a pesar del sistema federal centralizado, los estados y jurisdicciones sub-nacionales han jugado un papel igualmente importante a la hora de definir la política sobre derecho familiar y las relaciones entre federación y estados. Este trabajo argumenta, que la doctrina de centralismo que tanto permea la forma en que pensamos sobre derecho privado en México es una narrativa peligrosa que —de no ser abordada o revisada de alguna manera, en términos del pasado o del presente— puede socavar esfuerzos para entender el cambio jurídico y mejorar el derecho familiar en México.*

PALABRAS CLAVE: *Federalismo, descentralización, soberanía en derecho privado, derecho comparado, derecho familiar.*

TABLE OF CONTENTS

I. INTRODUCTION.....	47
II. LOCAL CODES AS SYMBOLS OF FEDERALISM: 1820-1830.....	51
1. STATES' REGULATION OF FAMILY LAW ON THE BASIS OF REVOLUTIONARY PRINCIPLES	55
2. ZACATECAS: WEAKENING OF THE CHURCH'S POWER AND AUTHORITY OVER MARRIAGE	55
3. OAXACA: SHIFT TOWARD GENDER EQUALITY AND PARENT-CHILD RELATIONS.....	56
III. DUAL FEDERAL-STATE FAMILY LAW SYSTEM: 1835 TO 1916	58
IV. SIMILARITIES: 1868-1885.....	60
1. THE CIVIL CODE OF 1884.....	66
V. ATTEMPT AT NATIONALIZING AND CENTRALIZING CIVIL DIVORCE.....	67
1. YUCATAN AND THE FOREIGN DIVORCE TRADE MARKET	69
2. THE UNDOING OF MEXICO'S EARLY 20 TH CENTURY UNILATERAL DIVORCE LAWS	71
3. VIOLATIONS OF DUE PROCESS.....	73
4. TRENDS OPPOSED TO MARRIAGE EQUALITY: 1932-1940's	74
VI. DIVERGENCE BETWEEN FEDERAL AND STATE CODES	75
1. EQUALITY BETWEEN MARRIED AND COHABITATING PARTNERS	75

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