

THE
Problem
OF **Power**

BY LUIS RUBIO

**Mexico Requires a New
System of Government**

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*“Greater than the tread of mighty armies, is an idea
whose time has come.”*

- Victor Hugo

To my daughter Erika

This text is the result of my reflections after writing a *Mexican Utopia: The Rule of Law is Possible*. Since the publication of that book, I have continued to think about the causes of the weakness of the Mexican government as a whole, and I benefited greatly from the comments that I received in response to that publication. This new text is a continuation of my analysis of the Mexican reality and the opportunities to transform it.

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I am, of course, solely responsible for the final text that the reader has in their hands.

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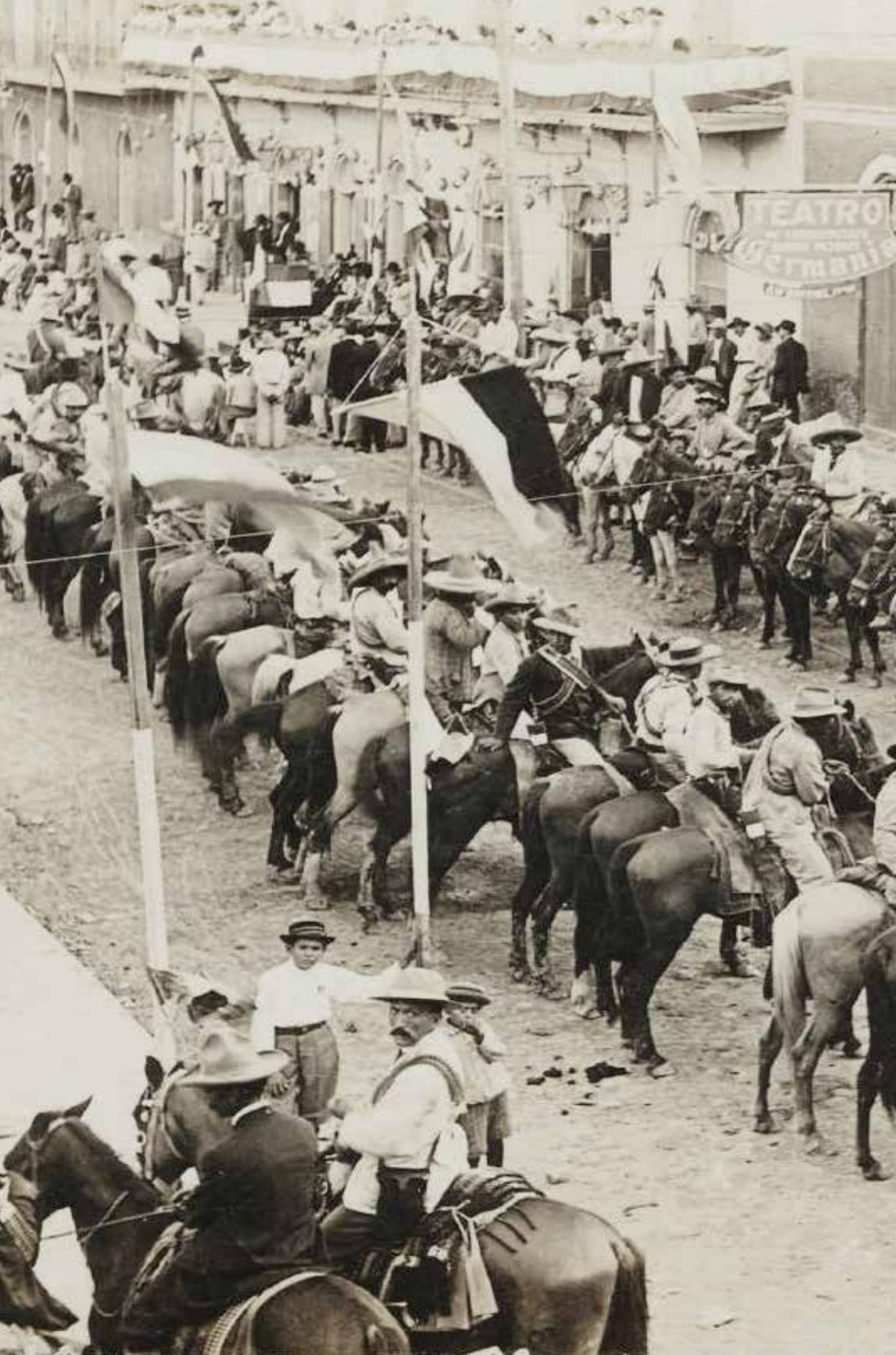
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Introduction

“After a revolution, of course, the successful revolutionists always try to convince the doubters that they have achieved great things, and usually they hang any man who denies it.”

H. L. Mencken

The concentration of power, an innate feature of the regime that emerged from the Mexican Revolution, enabled a functional political system to emerge after the second decade of the 20th century because the Mexican society of that time was much simpler than the one that exists today. It was essentially rural and aspired to build an industrial economy, all of which was consistent with a government scheme of political and labor discipline. Ninety years later, circumstances are different and the concentration of power model is both dysfunctional and illegitimate. Still worse, and this is the key point, such concentrated power no longer maintains stability and has lost the ability to transform.

The problem of power in Mexico has internal and external causes. The political system built in the first decades of the 20th century was based on consolidating the power of those on the winning side and providing limited and regulated spaces for participation for the rest of organized society. This became what Mexicans colloquially refer to as “the system” that controlled labor, the peasantry, and much else; the rationale was the perceived need to stabilize the country after the Mexican Revolution. The system had the virtue of creating conditions not only for a period of lasting peace but also for economic development; its biggest fault, however, was its lack of adjustment mechanisms. Compounding the adjustment problem, most rules were not formal; and, their enforcement was based on loyalty, fear, and perceived risk. Thus, the only source of flexibility in the system which was established as a permanent structure was each President’s being limited to a single six-year term. This was not a minor constraint --it enabled change and mobility within the political elite. But it did not allow an on-going shift that would foster adaptation within a changing society: members of the

so-called “Revolution Family” would change, but the relationship of that cluster with society would remain the same despite society’s continuously changing.

In terms of external causes, Mexico’s situation at the end of World War II favored national, introspective, and isolated solutions. Industrialization by import substitution, encouraged by ECLAC and the American government, had an overwhelming political logic: it not only enabled the growth of a

“The political system built in the first decades of the 20th century was based on consolidating the power of those on the winning side...”

new economic sector but brought with it an overarching system of political control, due in particular to the fact that that Mexican labor unions were completely under the control of the PRI and its predecessors.

But all of these frameworks started to crumble by the mid-sixties when grain exports stopped being enough to finance the machinery and equipment imports required by industry. Later, the economic liberalization that began in the eighties had the political effect of altering the control and dependence structures of both workers and entrepreneurs. The system that used to control everything slowly lost its power and therefore its capacity to control.

The great success of the “old” PRI-centric political system was that it enabled society’s rapid evolution. By 1960 Mexico had developed into an urban society with increasing incomes across a multiplicity of entrepreneurial, professional, and artistic activities. Both the economy and society experienced extraordinary growth, expanding their areas of activity and their perspectives alike: by the end of the Revolution people sought peace and quiet; half a century later, their demands were entirely different. By the end of the sixties, the post-Revolution generations that had not lived through the effects of an armed conflict demanded economic, social, and political conditions that clashed against the essence of a system created at the end of the Revolution.

For several decades, there was no difference between the monopoly on

power and the functioning of both the political system and the government: each one complemented the other and made it effective. Problems began in the sixties when the economic structure started to show the limits of an autarkic strategy of industrial development and society through a student movement which started to demand participation in political decision-making processes. From then on, monopoly and functionality ceased to be the same. Decisions that favored functionality (such as the liberalization of the economy or proportional representation) threatened the monopoly of power, and preserving a monopoly (for instance, making the PAN and PRD stakeholders in the system of privileges) threatened functionality.

The control system that was so skillfully crafted in the twenties to sustain political control and the country's stability has been fading away for the past few decades. Economic reforms in the eighties and nineties, as well as the ones implemented more recently, had the purpose of enhancing economic performance and thereby boosting the effectiveness of the country's political system. However, in practice, they have had the opposite effect. When the economy was liberalized and autarkic control schemes were broken, the population acquired a new form of freedom that drastically reduced its dependence on the government and decreased the government's capacity to control key sectors in the economy and society.

The system's main challenge, the one that has yet to be solved, is that the evolution of society created ever-growing demands for political participation that the system was not designed to process, channel, or enable. Over time, formal and informal mechanisms of direct and indirect participation were created in order to co-opt political and social groups and organizations, but always in a marginal way. For example, in 1958, party Deputies emerged; but proportional representation and a so-called "governability clause" that aimed to preserve the monopoly of power followed soon after. A tipping point was the 1996 reform which triggered the possibility of real electoral competition but still had one flaw: the political system was not opened. Instead, the two main opposition parties were integrated

"The system's main challenge... is that the evolution of society created ever-growing demands for political participation that the system was not designed to process, channel, or enable."

into the existing system of privileges enjoyed by the PRI. Rather than creating a competitive political “market”, the PRI’s solution (one agreed upon with the opposition) was to broaden the space for participation so that members of other parties could benefit. The problem with this approach was that the system’s flexibility was not improved. It bought time but the core issue was not solved. The clearest example of this is that the PRD, one of the new beneficiaries, immediately started to behave as an intransigent rather than a loyal opposition. The answers to the strategies that have been given over time have addressed the challenges set by several members of the political elite but have not altered the essence of the power structure: since its foundation, the goal of the current political system, whenever internal or external circumstances changed, has been to preserve the monopoly of power rather than look out for the country’s political functionality or even its development.

Incredibly, voters have vouched for this reality as they have showed with their choices since 1997, the year of the first national election after the electoral reform’s enactment. Although the structure of legislative power has changed with the inclusion of new political parties and, most importantly, the redistribution of seats among the three major parties, it is not hard to observe that the “winning coalition,” the group that approves the bills and enables the approval of budget, laws, and Constitutional reforms, has not changed significantly. That is to say that, although the political center has been divided between PAN, PRI and PRD, the heart of the political system has not been altered: the power balance has remained unchanged regardless of changes in internal and external circumstances. It is not by chance that election results no longer produce majorities and elections are won with only a third of the electorate. It is not unthinkable that the winning percentage will go down even more in 2018. In an open and representative political system, these winning margins would have meant a total redefinition of political priorities. But in the Mexican political system, distribution of power and its benefits remains concentrated in a small group (and especially in the parties themselves) regardless of elections. Hence, an unrepresentative political system ends up being ratified by voters and the executive power easily exercises control despite the President’s having few members of his own party in Congress.

External factors, and especially economic affairs, are no less complex. Beyond the economic liberalization that has been implemented almost

continuously in the national economy since the eighties, the global economy has gone through an extraordinary transformation – globalization and the transition to a knowledge economy where

“All of this has changed the relationship between people and politics and has generated demand for participation and influence that would have been unthinkable fifty years ago.”

intellectual capacity is more highly valued than the capacity for physical labor. These changes had a dramatic impact on Mexico's political life.

While a traditional industrial economy is a system of unrelenting vertical discipline, an open society that depends on knowledge and information is more dynamic and controlled by no one. In the industrial age, the population lived under a framework of production lines and controlling unions which limited protest on the labor front. Entrepreneurs lived under government-set rules which had the capability to, directly or indirectly, determine their businesses' profitability. In the age of knowledge, regardless of the business or activity under which an individual works, everything is about information and information cannot be controlled despite attempts to censor it.

In the value chain, which ultimately determines income, salaries and wealth creation, the knowledge economy puts less importance on physical labor (a common feature of traditional industrial processes) and greater importance on intellectual activities. These intellectual activities are in new and different areas but they essentially imply that, even in traditional manufacturing processes, the workforce is less about manual activities and more about computers, devices, and automation tools. Beyond the industrial-shop floor, the services required by both the agricultural and the industrial economy require people committed to intellectual processes ranging from simple management to the creativity that can be seen in software design. Nowadays, even the most humble peasants use cell phones and the Internet to find out about the prices of their products and to avoid being exploited by middlemen. All of this has changed the relationship between people and politics and has generated demand for participation and influence that would



have been unthinkable fifty years ago. The structure of power that was based on the control of information and repetitive tasks no longer exists and is yet another factor that makes the old system of power unworkable.

What used to be instruments for control are now obstacles to development; what used to be sources for growth are now dinosaurs on the verge of extinction. In the past, an entrepreneur could live and become wealthy if he associated himself with the government; nowadays, if he is not close with his customer he will be completely lost. The government has become either a source of aid or a problem in itself, but it is rarely a solution because it does not ultimately control the outcome. Earlier on, education contributed to controlling the population; now, control prevents people from acquiring the skills and capabilities that are needed for the country's development. What used to be logical and rational –turning situations around or taking shortcuts in order to accelerate processes, what Argentines call *viveza criolla* (Creole cunning)– has become a massive problem. Clients expect compliance, investors monitor contract terms, and importers seek accountability. None of this can be accomplished with the *viveza criolla*; on the contrary, businesses that do not play by the rules of the modern world will be left out.

The rules of the modern world dominate economic activities because the new rules guide the export industry, migrants, and all “modern” economic sectors. Whoever does not follow these guidelines will fail. And in Mexico, the only sector that does not follow these modern rules is the government



and, in a broader sense, the political sector. Concentration of power has become an obstacle for development because the structure they live in and benefit from makes it impossible to develop checks and balances. In other words, because they have not been able to create a structure of checks and balances that is sustainable, feasible and credible, politicians, starting with the government, are the ones who have become a hurdle to the country's development.

What used to be an opportunity for development almost a century ago and was the only way in which the country could advance has now become the biggest obstacle to its development. This is the main message of this book: we have to build institutions, the rule of law based on due process, so that the country can have the possibility of breaking away from the vicious cycle in which it is now trapped.

The challenge to be addressed is one that touches the political system as a whole because of the system the solution implies the transformation and professionalization of all three branches of government, executive, legislative, and judicial, at all three levels, municipal, state and federal.



PART 1.

Power Transformation in Mexico

A country stuck between two visions

“The secret of change is to focus your energy, not on fighting the old, but on building the new.”

Socrates

Present-day Mexico suffers from issues having to do with growth, stability and order. These are not new problems but there is no consensus on how to solve them. There is not agreement on the origin of the issues or even on the country's essential features. In this context, any answer provided by the government or society is looked at with suspicion or at least seen as incomplete or, at best, partial.

There are many explanations and hypotheses about the nature of the problems that Mexico is experiencing but most point to an unresolved political conflict from the eighties.

Today, part of the country (particularly the former left of the PRI, mostly the core of Lopez Obrador's party today, MORENA) invokes the eighties, arguing that the country has stagnated since then and proposing to reverse measures and reforms adopted in subsequent decades and to resolve economic issues through political pacts...political agreements between political groups and sectors, just as happened in 1929 with the creation of PNR. The other part of society, the *other* Mexico, sees an extraordinary but incomplete transformation in the structure of the economy and the country's way of functioning. They propose to *accelerate* the reform process thorough implementation of far-reaching reforms, starting with the ones passed into law over the past three years. For this sector, the main problem is

not the economy itself but the fact that the government –the whole system of government– has not been reformed and its nature has not evolved since the eighties.

Regardless of the stance one takes or the perspective one has, there is no doubt that the characteristics and circumstances of 21st century Mexico are nothing like the ones that were present during the formation of the political system in 1929. But, with a few odd changes, that political system remains essentially the same today. In other words, Mexico's economy, demographics,

“The changes are real. The Mexican economy today is extremely competitive and the country is one of the world's largest exporters of manufactured goods. ”

society, and political conflicts have all changed --but the system of government and its corresponding culture have not experienced meaningful change since 1929.

The changes are real. The Mexican economy today is extremely competitive and the

country is one of the world's largest exporters of manufactured goods. The competitiveness of the modern industrial plant is impressive, especially when taking into account the state of the Mexican economy –inward looking and non-competitive – three or four decades ago. An open economy, that successfully competes and satisfies the needs of its population is a radical change compared to the era of crises in the seventies and eighties with its corresponding unemployment, economic instability, and inflation.

On the political side, electoral competition is just as robust and more dynamic every day due to reasons that are external to the political system, mainly information and technological change. The largest parties have lost their way among voters and new forces are coming into play and looking for the citizenry's endorsement. The country is also open to international scrutiny (of cleanliness of elections, human rights, standards of justice, freedom of the press, respect for minority rights, and other similar foci) and responds (more or less) promptly.

However, not everything has been transformed or advanced at the same pace. Some dysfunctional aspects of Mexican public life are not understood for what they are and continue to be an obstacle to the country's progress and the administrations that push for them.

Most of the legal, regulatory and political structure in Mexico comes from the “old regime,” a sociopolitical structure whose characteristics and way of functioning ceased to function after two radical changes. First, the liberalization of the economy and second, the political change that occurred in 2000. In retrospect, these elements altered all the factors that made the country work: the President and bureaucracy ceased to exercise centralized control; trade in globally traded goods and services was liberalized (but not the trade of other sectors); the President’s ability to impose his will on all national affairs disappeared; and economic and political decisions were, in the broad sense of the word, decentralized.

The reality of power had changed radically: from concentration to decentralization; from control to its loss and fragmentation; from top-down imposition to a dependence on the capability and integrity of each of the stakeholders. However it is seen –in the economy, in local governments, in civil society or in politics– the country has experienced a radical transformation in the nature and structure of power.

Interestingly, something that did not change was the institutional, legal and regulatory framework. With a handful of exceptions – some of them quite important – Mexico is still operating under an institutional and legal regime that has little to do with current reality. Such is the case with judicial power, the PGR (the Mexican Attorney’s General Office), labor legislation, the energy system, the police, and the army. The economy operates in the framework of a global environment but it follows the rules of a protected one; politics is impressively vibrant and competitive but still operates under rules that former President Plutarco Elías Calles (1924–1928) would acknowledge as his own creation; society is increasingly diverse and has more cosmopolitan experiences but the regulatory structure is from ancient times. The difference between reality and formal appearances is staggering.

Reforms in the eighties and nineties tried to partially harmonize the new reality with the existing legal framework. There was progress in some areas but others remain paralyzed. The main problem at the time was the inconsistency within the reforms and privatizations. Rather than following a consistent overall strategy, decisions were made on a case-by-case basis, many of them contradictory, creating the conditions that led to the 1994 financial collapse.

Since that year, the country has lived through an endless political argument about what course politics and economics should follow. This dispute has created an environment in which development has become impossible because the political system cannot create conditions for stability and trust that will allow the population to save, invest, and think in a long-term perspective.

There are two very different Mexicos: one that is focused on the future and another one that is trying to preserve the past. Both experience the uncontrollable force of globalization but neither of them have a clear path ahead. The “old regime” was based on abusing the right of property, ignoring the rule of law, and imposing the President’s preferences. This regime collapsed because it was unable to adapt to the times and to satisfy a growing population. But just because it collapsed does not mean that it ever actually vanished. No new political order has emerged that is able to create conditions of prosperity for the country in the age of knowledge. This is the result of an inefficient political system that fails to address the core problems or allow Mexico to progress. This is the challenge.

Reforms vs. reality

For decades Mexico has tried to change so that everything remains the same. It is true that the economy developed a lot, but just like in *The Leopard*, benefits and privileges of the old system have been kept at all costs. Although no one can deny the great advances in several fronts, the structure of power is still the same; the only difference is that the PAN and PRD are now part of this logic of ancestral corruption: everything changed so that nothing could change. Now, the cost is there for everyone to see.

The current government accepted a mantra from the last decades which argued that a series of reforms were badly needed and that these, by themselves, would transform the country. Problems were said to be “over-diagnosed”: what was never told, though, is that in order for the reforms to be successful they would need to modify the structure of power in each reformed sector. Nowadays, it seems obvious that what is missing is actually governing and that the reforms, as necessary as they are, are not really reforms in the absence of a government capable of enforcing them. The current power structure prevents a “new” system of government from emerging.

The heart of the matter is that it is not possible to change the country as the reforms intend if the function and distribution of power are not on the table.

It is impossible to carry out a reform in Mexico – both within a specific sector as well in broader areas – if the first priority is that the reform not affect the groups in power. Reform is nothing more than affecting interests; if this is an undesirable or unfeasible outcome than reform becomes an impossible task.

The economic impact

Regardless of the capability or willingness to carry out a reform of power, the consequences of not doing so can be seen in the division that characterizes the current Mexican economy. Mexico is not a single economy but two different and opposing economies that have the joint effect of decreasing the country's growth rate. A recent report¹ has revealed that the Mexican economy has a two-speed nature: one enhances productivity growth while the other one decreases it. Although the average growth of productivity has been of a meager 0.8%, the modern part of the economy has seen its annual productivity increase by 5.8%, while traditional and informal economy has decreased by 6.5%. Averaging them hides the story.

The report on the two economies begins with a series of questions: “What is Mexico? Is it a dynamic industrial power that builds more cars than Canada and that has become a global automobile exporter? Or is it a land of traditional slow-growing businesses and informality? Has it found the right combination of reforms to restore rapid GDP growth and raise living standards? Or is it stuck in a perpetual cycle of economic advances and retreats? Is it a modern, urbanized state that has adopted market reforms and built well-functioning institutions, or is it a place where corruption and crime are tolerated?”



The report argues that there are two economies: one that grows rapidly and another one that tends to shrink. Traditional and informal firms were 28% as productive as large modern ones in 1999, but in 2009 were only 8% as productive. Not only there is a major gap between the two economic sectors the gap is actually widening. Employees in traditional bakeries are one-fiftieth as productive as those in modern baking companies; 53% of small

“The report argues that there are two economies: one that grows rapidly and another one that tends to shrink. Traditional and informal firms were 28% as productive as large modern ones in 1999, but in 2009 were only 8% as productive.”

and mid-sized Mexican firms are underserved by the banking industry; without an increase in productivity gains, GDP growth could drop to 2% a year. All in all, manufacturing in Mexico is 24% as productive as in the United States, even though many top Mexican

plants exceed the US average. In short, to reach a 3.5% GDP growth target, average productivity growth would have to triple. The big question is whether something like that can be achieved.

Those who have seen the way in which the country functions will immediately acknowledge its contrasts and contradictions. (The report, after all, notes that there are two different economies.) But it is not only that: the country finds itself in situations that are incomprehensible to foreign observers and investors. Perhaps we as Mexicans –used to everyday life’s surrealism– are not surprised at all by cases like the Mexico City Metro’s Line 12 or the Oceanografía scandal which, although not inconceivable in other parts of the world, would certainly be prosecuted as a criminal offense in many countries abroad. These cases are part of a frequent reality: excesses, fraud, corrupt authorities, absence of a government that will enforce legislation, manipulation of facts and timing for political reasons or to serve private interests, and not-so-independent regulatory agencies (with an alleged “Constitutional autonomy”) that have contradictory mandates that can potentially hinder their own success.

In a world going forward at the speed of light, Mexico is a country that refuses –or has been unable– to organize a response to and acknowledge its shortcomings, something that has resulted in a growing gap in its economy.

The modern part accelerated its growth productivity and has transformed it into a global exporter. The traditional part—which will fight with everything it has to prevent even the slightest change—is lagging behind and is impoverishing the country but continues to enjoy the government's approval. Ultimately, it is not the government or business that is retarding development. Both the *ancien regime* government and business forces are deeply invested in the old system and for the same reason.

A democracy that is not at the service of the people

The complex economic panorama has a direct reflection in the political sphere. The political transition experienced by Mexico throughout the last decades has been complex and checkered and has had more shifts and doubts than constants and certainties.

The institutional framework inherited at the end of PRI's tenure does not enable a healthy political harmony and keeps the citizenry away while allowing abuses by the parties and the government. Mexican corporatism did not die. It was simply transformed. Nowadays, the citizenry does not have legal protections and does not have effective rights against powerful interests in every area of the country.

There is no doubt that the country has gone through a process of profound political changes. The contrast of the current Presidential institution with that of the PRI's glorious past should convince even the most skeptical observer. In addition, there is new prominence for the legislative power, independence for state Governors (even though it has resulted in issues with overspending and arrogance), and a capacity for blackmail and extortion by the largest unions. It is clear that the old system has ceased to exist, at least in its original form. The problem is that the new system is not democratic, representative, or functional.

When considering the beginning, Mexico's 1996 political transition (when parties agreed to open competitive elections), there was still a fundamental difference between the revolution's Spanish counterpart or with those processes of nation building undergone by countries such as the United States in the 18th century or South Africa in the 1990s. While the aforementioned processes were agreed and negotiated, Mexico's was settled

“in typical Mexican style.” The country’s structure of political power (the great concentration of power in the Presidency and the PRI) was the factor that enabled the implementation of the fewest changes possible. Everything was done in order to maintain the previously existing privileges which were also shared with a small group of additional beneficiaries (PRD, PAN and state Governors).

The contrast with the other cases is remarkable. In Spain, political forces, which were born after a brutal civil war, decided to avoid a confrontation that would prevent the building of a modern, democratic and successful nation. This is what led them to reach agreements, to abandon old disputes, and to head toward the future. A similar situation occurred in South Africa where the end of apartheid did not result into attacks against the white population; instead, all the energy was directed towards writing and enforcing a modern Constitution. For its part, the United States had a ten-year discussion focused on setting up institutions that would enable effective checks and balances (a discussion which included the creation and quick demise of the Articles of Confederation), thus creating a system of government based on a tight balance that would provide stability for the new nation. Despite their major differences, these nations prioritized the citizenry, providing it with all the necessary protections to take action and placing them in the center of the institutional frameworks. In Mexico privileges depend on restricting citizens’ freedom and rights.

Each case reflects its circumstances and particular issues, but the lesson to be learned for Mexico is that the country’s transition has barely had any component of building new institutions, a system of political checks and balances, or the consolidation of mechanisms for the development of a thriving citizenry that is put at the core of political life. Rather, its transition has showcased a defensive approach: instead of leading the country towards the future, all efforts were put towards defending the status quo and protecting old, acquired rights. Parties and politicians that negotiated the electoral reform of 1996 had more interest in strengthening the three major parties than representing the citizenry or creating a democratic institutional framework. This deficit remains and needs to be addressed.

Mexico is living in two different realities: one of a modern country and one of a traditional one; one of a country that is growing and getting wealthier

and one that is getting poorer and is being left behind; one of a country with opportunities and one without possibilities. The core of the problem lies in an obsolete system of government that is unable to adjust itself to the circumstances of a country such as Mexico in the 21st century. And the challenge is both institutional as well as cultural.

On the institutional side, the challenge is to develop checks and balances so that there are counterweights to the exercise of power; on the cultural side, Mexicans have to face up to the reality of the information age, competition in the economic arena and what that means for domestic politics. The extraordinary thing in Mexico is that PRI culture remains steadfast and that culture is incompatible with the need for legislative negotiations, transparency in government, respect for the rights of others, and accountability.

Of course, Mexico is not the only country that faces this kind of ordeal. Advanced and developing nations show similar tensions in their debates and disputes. What stands out about the Mexican case is the absence of a clear and open debate that addresses these challenges and, above all, a system of government that prevents any debate

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from being transformed into public policy to tackle the issues. As has been argued before, the system of government belongs to a different era in the country's history and is unable to address the challenges ahead. The various parties and political forces are more a representation of themselves than of the diverse sectors and interests of Mexican society which makes tackling the country's structural challenges enormously difficult.



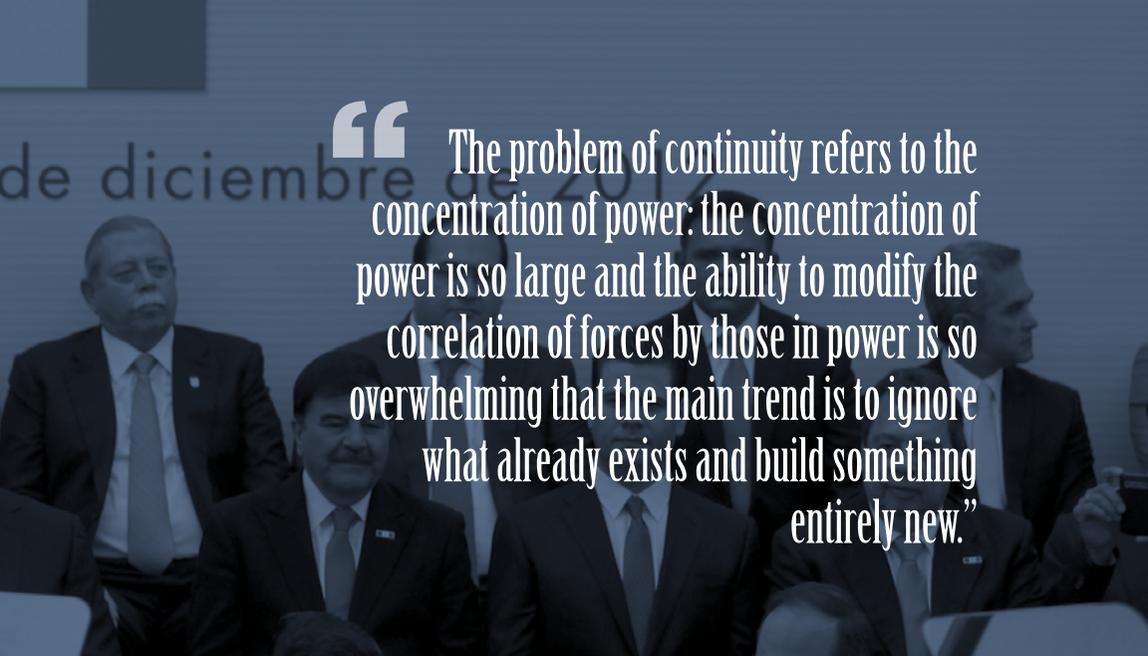
The problem of power: the key to future progress

It is legal because I wish it.

King Louis XIV of France

The main economic problem in Mexico is its political system since this system has prevented the country from making decisions and implementing much-needed reforms. No one that has followed how the country has worked would challenge this observation, which is the reason the three major political parties were willing to come together for an agreement known as the Pact for Mexico. The Pact for Mexico covenant enabled plenty of necessary changes but did not address the true problem --the reality of power which reflects the absence of the rule of law and political and economic stagnation.

The great question is whether the problem is that the existing procedures are useless to tackle decisions or conflicts (hence the Pact) or whether existing institutions do not tackle these decisions and conflicts because they are extremely vulnerable. This issue lies at the heart of Mexico's apparent lack of capacity to build long-term projects and attract investment in sectors



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and programs with projects that take more than one Presidential term to be completed and that provide certainty to the general population. This problem appeared over the past few decades, the result of a break with a very different past that the circumstances described above forced upon a country that used to be inward-looking, with a small population, a lack of information about the rest of the world, and a self-contained economic structure.

It is not by chance that Mexico is facing challenges in areas as diverse as security, the structure of regulatory entities (such as competition, telecommunications, transparency, energy and elections), secondary legislation on recently enforced Constitutional reforms and, particularly, the inability to implement reforms adopted by the legislature. It is not that things have gotten worse but that they are not addressed in a consistent manner. Each of the reforms deserves praise and has a purpose, but they can only succeed if they satisfy two general criteria: first, they need to ensure continuity beyond a single Presidential term; and, second, they need to tackle the core of the problem in the corresponding sector or activity. Neither of these two scenarios appears to be happening.

The problem of continuity refers to the concentration of power: the concentration of power is so large and the ability to modify the correlation of forces by those in power is so overwhelming that the main trend is to ignore what already exists and build something entirely new. Some governments decentralize; others have a centralizing approach: an administration will

propose a particular police model and the subsequent administration will reinvent it. There is no continuity, a factor that lies at the heart of Mexico's weak institutions. The fact that authorities, at any level, can ignore the law and established procedures makes it impossible for institutions to take root. A recent example of this is the decision taken by the government of Nuevo Leon to reject an agreement made by KIA Motors with the previous

“In political terms, what is required for peace is legitimacy.”

administration. In the political arena, the ability of the Green Party to avoid sanctions illustrates the true value of existing counterweights.

In plain terms, as long as the government can modify the structure of institutions at will, these will be unable to fulfill their purpose: to depersonalize power. Perhaps there is no better proof of this than the fact that members of the commissions responsible for key processes such as elections, transparency, and regulation (for example the competition and telecommunications commissions) are changed on a regular basis, not when they have to according to the law but because of political interests. When this happens, it is inevitable that institutions will be weakened due to the absence of real autonomy. If neither society nor the members of these bodies have certainty over the duration of their tenures they will act without commitment, for themselves, in a corrupt way or will accommodate to the circumstances.

In recent years, many institutions with so-called Constitutional autonomy have been created, but this autonomy is yet to be proven in reality. Those who advocated for autonomy responded to an urgent need to strengthen the State's capacity for action in important and critical areas. The question lies in what will be different this time around to justify the certainty sought by reformers. In other words, how will they guarantee the permanence of commissioners (or their equivalents) and ensure the independence of their decisions? It is not a simple issue to resolve due to the disregard for institutions showcased in the trend to frequently modify their structures and change their board members. This is clear evidence of the reality of power.

Modifying institutions that are allegedly autonomous occurs because the individuals that make these changes have the power to do so. There is no other way to put it.

Is a consensual project feasible?

“What is peace? Is it simply the absence of war?” These are the fundamental questions analyzed by Kant in *Perpetual Peace*. Kant argues that if peace is nothing but an agreed upon truce between contenders so they can prepare for their next attack, if it is nothing more than the continuation of war by political means (as Clausewitz would have argued), if it is nothing more than the successful subjugation of one belligerent by another, then it is not real peace at all. According to Kant, real peace requires the rule of law within the State and between the contenders. That is to say, it requires that all who agree on peace should believe in it and take it as theirs. In political terms, what is required for peace is legitimacy. If one translates this to Mexican politics, Kant would disapprove of political parties and the government because they obviously do not accept the rule of law, because they see agreements and the law as a means to eliminate their opponents in the next election rather than a competition in which everyone possesses equal rights regardless of who wins or loses.

The problem of power in Mexico has two dynamics: the first one refers to the relations between political parties and politicians. In this dimension, there is a continuing conflict and, at the same time, a specific functionality. Although it might appear to be paradoxical, both are inherent parts of the country's political life: recent years have revealed the existence of bargaining power, joint initiatives, and cooperation between parties and politicians; on the other hand, there is still a tendency to discredit opponents, to challenge the transparency of elections, and to assume that legitimacy is measured in terms of who wins rather than who plays by the rules. The reality is that Mexican politics is rooted in corruption (which now has extended to all parties, not only the PRI) and the pursuit of power by any means and at any cost.

Rules are a nuisance for the political class, which sees them as a cost of taking part in the game rather than a mandate to which they must adhere without hesitation. All that matters is power and there is no limit on the road to achieve it, mainly because power still is a zero-sum game: one's gain is another's loss and both benefitting is impossible. This is the main problem of Mexican democracy; it is not accepted that all political forces must abide by and respect the procedures for reaching power and that the system should exist for the benefit of all. There is no worse obstacle for the political class than the existence of checks and balances because they hinder

the political class' abuses. This stems from the lack of acknowledgement that Mexico is a diverse, disperse and complex society that no single party or person can fully represent. There is also a refusal to accept that each party represents only a part of the electorate and that their legitimacy is derived from building coalitions and respect for minority rights. The old political culture of monopoly control still reigns supreme. However, that monopoly power is not absolute, which is why it is essential to institutionalize effective mechanisms for power representation and distribution that will legitimize rulers as well as the exercise of power itself.

The other problem with power is derived from the relationship between politicians and citizens. In contrast to the relationship between politicians, where survival of the fittest is the rule, but actors take each other seriously, the Mexican political structure sees citizenry as a nuisance: in Mexico, politicians are protected and isolated from the general population while also enjoying mechanisms that allow them to ignore the population altogether. The way in which reelection in 2018 will work, a topic that will be discussed later on this text, is an example of this problem.

Perhaps there is no better way to examine the gap between the institutionalization of power in Mexico compared with consolidated democracies (a matter that will be discussed later on) than to study the origin of the latter, especially at a time that marks the 800th anniversary of the issuing of *Magna Carta*, the cornerstone of the rule of law in civilized and democratic countries. In essence, *Magna Carta* was the written confirmation that law is above the ruler. By signing it, King John accepted that he could no longer decide the rules and act as he pleased, but rather within the limits imposed by a contract agreed upon with his noblemen. From then onwards, rights and freedoms that civilized countries now see as obvious ensued: property security, equality before the law, freedom of expression, sanctity of contracts, frequent elections, swift justice, etc. In 1215 England was a nation infinitely less developed than present-day Mexico, yet there is no *Magna Carta* that can directly address the problem of power faced by the country today.

Reforms, more reforms and pacts

Journalist Alexander Woollcott told the story of when he asked G.K. Chesterton about his view on the difference between power and authority.

“If a rhinoceros were to enter the restaurant now, there would be no denying he would have great power here. But I would be the first to rise and assure him that he had no authority whatsoever”². This is the government’s relationship with Mexicans: lots of power but little authority. Authority is won with clean elections and later on in the responsible daily exercise of government functions. Until the mid-twentieth century, Mexican governments had achieved that legitimacy but lost it in crises, inflation, repression and dismal economic performance. The irony is that the origin of many of these ills dwells on failed attempts to remain in power.

Mexicans have experienced decades of poor government performance largely due to a system of government that has become obsolete and which no longer meets the requirements of the large, diverse and globalized country that it seeks to govern. Rather than solving problems, Mexico has sought ploys (the recent Pact for Mexico being the best example) to avoid tackling the issues or, in rare cases, it has adopted mechanisms geared to isolate certain matters (such as foreign investment through NAFTA) from the erratic behavior of the country’s rulers. These instruments have allowed navigation through everyday problems but also prevent the nation from taking a big “leap forward” towards a new stage of development.

An example of the problem is the fact that Mexico has been reforming aspects of national life for over forty years but has still failed to address the issue that lies at the

core: concentration of power and lack of counterweights. This statement does not intend to belittle the reforms undertaken since the 80s, deny the extraordinary progress that has been achieved, or ignore the difficulty of facing

“Rather than solving problems, Mexico has sought ploys (the recent Pact for Mexico being the best example) to avoid tackling the issues or, in rare cases, it has adopted mechanisms geared to isolate certain matters.”

ancient problems and intricate interests. The point is that the objectives that have been pursued through different reforms cannot be achieved without modifying the government structure since a lot of what prevents the achievement of reforms and their success is the political system’s way of functioning.

In the beginning, the system was designed, built, and managed according to the logic of concentration of power, full control of the country, and willingness to use force to silence dissent (even if cases of dissent were rather exceptional). That characterization of the system was valid for a few decades after the creation of the PNR in 1929, but its own success modified its shape. Eighty-five years later, Mexican society has no resemblance to the one that existed back then: its size, diversity, knowledge, international connections and geographic spread are radically different.

The problem is not that the country will suddenly go crazy but that it is unable to wake up from its lethargy regardless of the various attempts that have been made from the most diverse sources: economic and political reforms, alternation of parties in power, adoption of external mechanisms to provide legal guarantees and also the appointment of citizens or officials from various political parties to sensitive functions. A member of the PAN party's tenure in the Presidency or a PRD mayor in Mexico City are compelling examples which showcase that the system endures regardless of who is in charge. Under these circumstances, it is not by chance that change approaches yet problems remain. The government –Peña Nieto's– that promised efficacy with a convincing performance record stagnated after facing its first problems because there are no suitable mechanisms for the Presidency to interact with political parties, Governors, and, above all, citizens.

A reform in power can only work if it is a result of negotiations involving not only the relevant political stakeholders, but also, and principally, the citizenry. That is to say, in order for it to enjoy both legitimacy as well as advocacy across the country, a reform requires virtually universal support. In other words, it has to be foundational.

The fact is that the country's problems are becoming increasingly complex and cannot be solved with half-finished measures and even less with a frightened and absent government. It is fundamental to think bigger, to build a new institutional platform that will address and resolve the core issues facing the country and which are a source of eternal conflict: from the election to the legislature's functioning, corruption, and torture. That is to say, it is imperative to build an effective institutional structure that is functional for the next century, rather than, as usual, one that is a quick fix for, at best, the next presidential term; this would be a major leap that will enable to forget today's quarrels and will allow the consolidation of a modern country that grows, takes care of its population and appreciates its government.



Government and citizenry: an insurmountable distance

“It is said that power corrupts, but actually it’s more true that power attracts the corruptible. The sane are usually attracted by other things than power.”

David Brin

Direct democracy, an Athenian invention, was based on the principle that citizens should decide and that the ruler was a mere executor who took orders from the citizenry. Two thousand and four hundred years later (and billions of human beings in between), the concept of democracy has shifted away from the direct model to the representative variety: instead of citizens’ voting on (or vetoing) everyday decisions, there are elected representatives who are given authority to make those decisions. This approach is the reason that parliaments and other legislative bodies were created; they are now responsible for representing the citizenry. Although citizens no longer have a direct say in the decision-making process, the principle behind the representation that characterizes representative democracy is that citizens may remove (at specified intervals or under certain conditions) the representative whenever the representative’s performance is no longer deemed satisfactory.

These elected bodies are part of the separation of powers, checks and balances between the branches of government: the legislative power will review and fund (or not) the actions taken by the executive and the judiciary will resolve disputes between them both.

There is no better way to explain the need for checks and balances than quoting James Madison: “if men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.” The idea and goal of representative democracy was to create closeness between citizens and representatives while, at the same time, ensuring enough distance that the government would be able to run. It is a good idea. The problem in

“if men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”

Mexico is that the distance between the citizen and the representative is so great that the link has been broken. The contrast with the United States is enlightening; while the distance between the two groups in Mexico was reduced

after the Revolution, particularly with the expansion of public education, the exponential population growth between 1960 and 1980 broke the mechanism and made educational differences worse.

The closeness or distance between citizens and their so-called representative depends on several factors but, at the end of the day, public officers seek to satisfy their own goals. As normal individuals that are subject to pressures, opportunities, friendships, and desires, lawmakers stick to what they perceive to be the most likely path to preserve their status, privileges, and employment. Will they be closer to their citizens or their party leader? It all depends: if their job depends on the citizens, representatives will do everything in their power to satisfy them; if their current or future employment depends on the goodwill of the party leader, legislators’ loyalty will be absolutely subordinate to the leaders’ wishes. In other words, it all depends on the incentives that exist in the political system.

In the Mexican system, all incentives work in favor of the party leader. The electoral structure and the mechanisms in the law skew the entire system toward distance between the representative and the voter. While there are good arguments for maintaining a certain distance, in Mexico this distance has been magnified to the point that the notion of representation has lost all its practical meaning. There are electoral systems of pure proportional representation in which the voter hardly knows who he is represented by; however, in Germany (a country with a hybrid system), voters will always know which party their representative belongs to and will be able to identify him or her with certainty. Reelection is one of the most used mechanisms for ensuring that there is a permanent bond between citizens and their representatives. This distance can be different in systems of direct representation, such as the one present in the United States, compared to the variety of parliamentary systems that exist around the world. In Mexico, however, this matter has been brought to an absurd extreme: although reelection was recently approved (after almost a century of being banned), it was on the condition of the party leader's approval, so that the incentives for the Deputy (member of the lower house) or Senator remain tied to the party bureaucrat rather than to the citizenry.

Ironically enough, if this problem seems large at the federal level, it is even larger in the local sphere. Budgets are an illustrative example: state Governors receive budget allocations that are *de facto* "black bags", that is, they are given money that can then be used almost entirely according to the official's discretion without any sort of accountability to the citizenry (a factor that should be essential to a democratic political system) or even the federal authorities that granted the resources in the first place. This happens because Governors have amassed enough political power to impose themselves upon the federal institutions and authorities that are supposed to impose accountability. Although there is authority to audit these resources, the most likely scenario is that the review process will not find the Governor guilty of any misdemeanor and, even if he or she were found guilty, the verdict will arrive late and will greatly depend on the will of federal executive. That is to say, the probability that a Governor will be prosecuted for misuse of federal funds is virtually zero. In this context it is no coincidence that Governors prefer to be subjected (humbly, of course) to abuse by the Secretary of Finance by having to beg for federal resources rather than raise taxes locally. Their alleged humility is absolutely rational: it is far easier to satisfy a federal

officer's demands than to be accountable towards local citizens. Thus, as happens with Congress, the Governors' incentive is to always keep a distance from the citizenry.

After the 2015 midterm elections, several states "reviewed" their electoral laws to ensure that an independent candidate could never win an election, an understandable response after the cases of Nuevo León and Jalisco. The change would not be significant but for the fact that it is indeed possible: politicians and bureaucrats are protecting themselves against citizen actions. By this I'm not implying that independent candidates are a solution or even a valid response to the problems of representation that characterize the country. Nevertheless, the proceedings are suspicious, to say the least. Beyond

"When the first and only priority is the preservation of privileges, the electoral system ceases to be representative."

the loopholes that may appear in the future, the mere fact that politicians feel threatened by citizens is quite revealing. When the first and only priority is the preservation of privileges, the electoral

system ceases to be representative. All these phenomena are aggravated by the legislative power's lack of professionalization (an inherent feature of a system with no reelection, thus no incentive for members of Congress to become professional) which cannot be corrected with the current reelection system. In other words, the legislature cannot become a real and effective counterweight to the executive under its current design.

Does this matter at all? It matters because citizens are destitute: because the relationship between the citizenry and their elected representatives has reached a breaking point. This does not imply that the country is at risk of collapsing, but the system's legitimacy is in tatters which will, sooner or later, lead to crisis.



The structural problem of power: why President Peña's way of governing does not work in current times

“When there is turmoil under the heavens, little problems are dealt with as if they were big problems, and big problems are not dealt with at all. When there is order under the heavens, big problems are reduced to small problems, and small problems should not obsess us.”

Chinese Proverb

It is no secret that the government of President Peña has responded poorly to several problems and challenges in its tenure. A symbolic, but revealing, example of this was the decision to remove a government advertisement whose message was “*ya chole con tus quejas*” (roughly translated as “enough with your complaints”) as a way of addressing the President’s low approval ratings as well as the lack of credibility that characterize his administration.

It seems clear that this is a government that feels besieged, protected behind the walls of the Presidential residence but without the ability to understand

“The Economist stated that the President ‘doesn’t get that he doesn’t get it’”

what is happening outside. What is the reason for the President’s approval ratings’ reaching the critical situation where they are today, in his fourth year

in office? The administration does not seem to even understand the nature of the problem, what the population is concerned about, and why all of a sudden the mood became so grim.

At the beginning of 2015, the British magazine *The Economist* stated that the President “doesn’t get that he doesn’t get it”, which summarizes both an attitude and a factual situation. If a problem cannot be accurately defined then it cannot be resolved.

Beyond the lack of willingness to understand the problem, something astonishing if only for what it says about political survival, it is also clear that even if the government had successfully responded through better communications and political management, the bottom line is that more than improved communication is required to address the challenge the Presidency faces. The country requires much clearer responses, new public policy proposals, and a rethinking of its institutions.

The political problems that characterize the country are structural which means that even the most elaborate media response would be insufficient. If *The Economist* is right (and it is), it is understandable that the Peña administration does not want to understand.

The structural problem

The structural problem of Mexican politics has three different angles: a lack of legitimacy, a dysfunctional system of government and non-institutional political activism.

Lack of legitimacy, a factor that encompasses the population’s perception of the government, the political system, politicians and parties, can be observed in all areas. Some obvious examples are the low popularity that characterizes the administration and its political party, the government’s paralysis and that of all the political apparatus, but especially the widespread perception of

corruption and impunity which is attributed to the system and members of all political parties.

Although problems of legitimacy could be attributed to some particular events or specific individuals, the problem has a wider scope: a complete lack of ability to govern, a fact that, with few exceptions, is also characteristic of local governments throughout the country. Mexican governments do not govern because they are engaged in other matters and because they do not see themselves as responsible for creating conditions in which the population can improve their lives and prosper. In Mexico, a Governor does not get into his office to try to improve the lives of his or her constituents but rather to make money and or build the road towards a Presidential campaign. Governing is not a priority.

The dysfunctionality of the political system derives from the changes experienced in the country over nearly a century. In all this time, the system of government has not adapted to new and ever-changing circumstances. One example summarizes it all: when the government was accused of violently suppressing the 1968 student demonstrations its reaction was not to build a modern police force that was well-trained and taught to respect citizens' rights. Instead, every government since then has chosen to never impede any demonstration or blockade, regardless of its origin or potential harm to others. From that moment in 1968 onwards, all governments in the country have opted to protect protesters at the expense of the citizenry that, needless to say, are the ones who produce, create jobs and pay taxes.

Security policy is merely a sign of the decrease in the quality of the Mexican government. Its structures were designed, organized and built for an era in which the government dominated most aspects of national life, there were no significant links between the population and the outside world, and the economy was effectively self-contained. This system of government remains though the population has tripled since 1960, the country is now fully connected to global media outlets, and citizens are connected to relatives abroad via email and are less dependent on government actions for their economic development.

These circumstances explain various deeply concerning issues. For example, an attorney general's office which does not have effective, independent and professional powers for criminal investigations; inefficient public spending

that can always be manipulated by authorities; a world of flagrant corruption; and the absence of a professional bureaucracy or civil service dedicated to the management of national assets in a way that looks beyond the political authorities of the moment. Mexico never professionalized its system of government and is now paying the cost in the form of illegitimacy and dysfunctional and dismal performance in all of areas: the legislature, public security, public finances, justice, infrastructure, etc.

Finally, there is the issue of increasing political activism. The good news is that much of this activism is an indicator of the maturity of a society willing to demonstrate, block government actions, criticize, and complain. Rising social activism has shown two trends: on the one hand, there are those who seek collective action without breaking the law or disturbing the daily lives of the rest of the population. Although these groups are growing in number, their impact can only be observed as they acquire public visibility.

Activists that take to the streets and blocking avenues as well as public buildings are excluding the citizenry and advance their own causes only by being outside of the institutional and legal framework. Some even go so far as to ask for the resignation of the President before the end of his second year in office. The fact that even demonstrations as well organized and motivated as those arising from the Ayotzinapa case have not achieved the goal of removing the President is a vivid example of the enormous distance between Mexican politicians (a topic discussed in Chapter IV) and the citizenry. Above all, it is a reflection of the aforementioned second problem: in the absence of the mechanisms that are inherent to a modern system of government, such as checks and balances, the public response to a dysfunctional government cannot be anything other than protesting, whether in an active or passive way.

Activists in Mexican society have not acquired the capacity to mobilize effectively or the power to jeopardize the government's stay in power though this is what many such groups aspire to. Nonetheless, they have had the effect of branding the government as illegitimate, decreasing its approval ratings, and paralyzing it altogether. These all are signs of a structural problem of enormous depth. The result is that 21st century Mexico is characterized by a system of government that does not work and by a society that lacks the most essential means of participation or influence, all of which creates an environment of frustration, uncertainty, and distrust.

Old solutions

In the industrial era, governments had the ability to control their societies largely because the dynamics of production generated a self-contained system that took hold through forms of organization and participation inherent to that time, namely labor unions. In this context, all a government had to do was to create conditions of certainty for essential political and economic stakeholders and everything else would emerge from those conditions.

Back then, stability could be explained by an entire social and productive structure that would not defy those in power and did not have the capacity or information to do so. Life was simpler and the tasks and services required of government were easier to perform and provide. The old solutions worked because they were not old then –they were responses to the specific circumstances of the time, the country, and the world.

Nowadays, the real business –in social, economic and politic fields – is information and knowledge. That is the source of development, in the broadest sense of the word, of a society. What used to be about control now works thanks to creativity; what used to demand discipline now requires merit. The old education system was conceived

as a mechanism for strengthening the PRI's hegemony and controlling the population, but what is required today is a population with the ability to think, analyze, process, and transform information into economic development. In the era of knowledge the discipline of the industrial age is no longer functional since every person has more control over their lives and does not feel a connection with the old control mechanisms. In other words, the fundamental structural problem of Mexican politics is that they are stuck on the dogmas that belonged to the era of the Presidency of Lázaro Cárdenas while the country and the world now live in the information age.

“...the fundamental structural problem of Mexican politics is that they are stuck on the dogmas that belonged to the era of the Presidency of Lázaro Cárdenas while the country and the world now live in the information age.”

My impression is that Mexico's main problem is that the government still in place today was formed after a revolutionary movement and continues to act as such. Unlike governments emerging from society or which aim to address the population's demands, Mexican administrations come from a group that won the Revolution and never felt obliged to cater to the people. Fidel Velázquez, the fabled labor leader, once said about the government: "By the force of *arms* we won power and only by the force of *arms* will we relinquish it." Mexico's system of government has not evolved towards democracy or along paths that will enable its professionalization. One needs to observe nothing more than the way in which the rules of the game (the real ones, not those written in laws and regulations) are modified with every new administration: it is difficult not to conclude that there is a fundamental problem of institutional weakness in the very structure of government.

The problem worsened as the system was modified in the nineties when the first major electoral reform (1996) led the single-party scheme to transform into a three-party system. That is to say, Mexican democracy has made great strides in electoral matters but never really opened the system in terms of power. What the various electoral reforms after 1996 did was to open up the system for two new stakeholders, PAN and PRD, without altering the power structure in Mexican society. This is neither good nor bad, except that, besides incorporating these parties into the structure of power, it did not improve the quality of government or, in the long term,

"Mexican democracy has made great strides in electoral matters but never really opened the system in terms of power."

provide legitimacy for the system. It is not difficult to conclude that the poor economic performance of recent decades reflects not just economic structural factors but also a reflection

of the institutional weakness that characterizes the country which is, in turn, a result of political disagreements.

The deeper issue is that the objectives that have been pursued through a diverse package of reforms cannot be achieved without modifying the system of government, because a great deal of what prevents the successful implementation of the reforms is related to the political system's way of functioning (or not functioning). The problem of power can be observed in several ways: in the perpetual unrest, in the poor quality of governance that



characterizes both federal and local administrations, in the lack of continuity for public policies, and in the insecurity in the absence of a judicial system that is able to address and adjudicate everyday problems.

Although most diagnoses agree on the nature of the problem, the issue at the heart of the problem cannot be resolved until society forces politicians to respond or a leadership able to form a modern and functional institutional construction emerges. The 2015 midterm elections showed a society with an increasing willingness to assert its voice, but with clearly limited resources and skills to do so.

The Presidential response

The aforementioned context should provide the explanation for why President Peña Nieto failed to advance his government agenda. Having previously been a successful Governor, Peña Nieto claimed efficacy was his greatest asset. As soon as he took office, he initiated a legislative whirlwind. In a few months, Mexico's Constitution had had its main articles modified. The agenda of change was not new: everything that was reformed had already been discussed for decades; the impressive feature was his ability to transform proposed reforms into law. The President displayed great negotiation skills, but the key factor (which his predecessors in the PAN party could not handle) was that he was able to control the PRI legislators.

“...the new government placed itself above society and recreated old control mechanisms over the general population, Governors, the media, the unions, and businessmen. ”

Having been the historical owner of power in the 20th century, the PRI is the beneficiary of the status quo. Its opposition to the previous proposals for reform can be explained due to its desire to preserve its sources of

power and cash. Peña's success was based in controlling these groups and preventing them from blocking the legislative process. However, as soon as it concluded, those same interests returned to ignore the reforms once again and continue with their traditional businesses. More important, the President did not have the will, or the power, to oppose them.

In addition to the legislative whirlwind, the new government placed itself above society and recreated old control mechanisms over the general population, Governors, the media, the unions, and businessmen. This reflected a core consideration: the government thought that the country needed to return to order and that the best model for this was to recreate the PRI's golden era: the sixties. Although it is obvious that the old political system and the ancient economic strategy did not collapse because the then-rulers wanted it to, Peña's government ignored the changes that had happened both in Mexico and in the world in recent decades and decided to carry out his own transformation agenda and created its own reality, as if the world would fit its preferences rather than the opposite.

The population saw the arrival of Peña Nieto and his determination with a mixture of awe and anticipation. As if he were an ancient *tlatoani*, (Aztec leader), Peña was there to save Mexico. Mexicans watched him with astonishment. However, the administration's economic performance went from bad to worse, tax increases affected the consumption of the poorest, and the anger of those affected by the increasing controls started to rise. As soon as the first crisis appeared—the straw that broke the camel's back— all of the country had turned against the President. After the deaths of 43 students in Iguala in September of 2014, the political message was clear: it was an excuse for the whole population, disguised in collective anonymity, to express its dissent.

The extraordinary thing was not the anger or the protests, both observable and predictable, but the government's complete inability to respond. Gone was the effectiveness or promised efficacy –it was now replaced by a frightened and paralyzed government. The reality of power in Mexico won: it was evident that the government's agenda would not alter the power structure but merely provide some efficiency to some sectors or activities, all without undermining the interests that benefit from the system.

President Peña's experience showed that Mexico has a serious problem of power: there is not a basic set of rules of the game that enjoy full legitimacy amongst political stakeholders; therefore, there are no rules at all. The President has enormous powers that enable him to exercise his will arbitrarily at any time which is why investment and credibility are limited to a *sexenio*, the six-year presidential period, and everything revolves around the trust (or lack thereof) that the President can inspire. Thus, the main problem is that Mexico lacks institutions that provide permanence and legitimacy to the system of government as well as guarantees for Mexican stability.

“Mexico is caught between the old system of control that still remains and a society that is more prepared and demanding.”

Mexico is experiencing a permanent schizophrenia: major changes and poor results; successful regions and extreme poverty in others; a government that promises efficiency but only provides a small amount of it. Mexico is caught between the old system of control that still remains and a society that is more prepared and demanding. Just like old times, this enables an apparent stability, but guarantees a permanent illegitimacy. That is, until the arrival of another President with new promises.

Why did the Pact for Mexico not fix the problem of power?

“It is not a myth that violence can alter events. It is a myth that it gives power to the people.”

Peter Ackerman and Jack Duvall

Achieving stability with high growth rates after the Revolution was almost miraculous and contrasted with the perpetual dictatorships in South America. Everything suggested that Mexico had found a successful and permanent formula. The model worked until it was exhausted.

What is significant --and the reason for the success of that era-- is the fact that the various components of the clockwork-like mechanism that made it work were generally coherent and internally consistent. Economic autarky corresponded with the authoritarian political system and with the structure of vertical controls inherent in the PRI system which kept Governors at bay. The scheme reflected the reality of the moment when it was built – the post-Revolution and post-WWII eras – and allowed the country to progress.

“ Once this balance was broken, the government began trying all sorts of solutions: they all tried to preserve the essence of the PRI’s system while also providing the economy with some oxygen.”

The fact that there was progress in some areas did not imply that the system was free of contradictions. When inconsistencies appeared, the system did respond: that was how it disqualified independent Presidential candidacies when they first surfaced and how it repressed guerrilla movements and, at the end of the PRI-era, student demonstrations. The system’s preference was always cooptation and the typical PRI strategy was to bring the opposition into the system’s corruption under the principle that there is no stronger loyalty than the one arising from complicity.

Problems started when contradictions were no longer small and the traditional responses could not solve the problems. For example, without acknowledging that it was a structural problem resulting from the depletion of foreign currency to finance imports, President Echeverria responded to lower levels of growth in 1971 with a sudden and major increase in public spending, breaking the financial balances that, until then, had made Mexico a model of fiscal virtue. Modifying this index “by a little bit” ended up undermining the old stability, destroying the population’s trust in government, and bringing the country to the threshold of hyperinflation.

Once this balance was broken, the government began trying all sorts of solutions: they all tried to preserve the essence of the PRI’s system while also providing the economy with some oxygen. It was a blatant contradiction but

it was logical in the context of the existing political system. Mexico required (and still requires) a total transformation similar to the one experienced by nations that are successful today such as South Korea and Chile, as well as Spain and Ireland before the Euro.

The problems were addressed by tackling their most obvious symptoms and by believing that they would eventually just fade away. This is how various political reforms and partial liberalizations ensued. Not that there were bad intentions; the ultimate goal was preserving the essence of the political system and its beneficiaries. Seen from this perspective, the most emblematic of the electoral reforms (implemented in 1996) was none other than the transition from a one-party system to a system with three major party stakeholders. The expanded regime granted benefits to new entrants and created a competition scheme that did not alter the essence of the old system. It just “democratized” it.

Nevertheless, contradictions were not resolved. One by one, they have been addressed in creative ways, though only tackling symptoms. At one time there were “person-institutions”, individuals that understood the situation

“It is in this context that the main characteristic on the government’s first stage, the Pact for Mexico, was relevant.”

and were responsible for keeping the balance (there were and there are still several of them); in another time, there were “autonomous” and “citizen” entities built on the notion that the

members of their boards (such as the Federal Electoral Institute or the Competition Commission) would not be corrupt and would guarantee serious and reliable actions on electoral matters, economic regulation and, more recently, energy affairs. As mentioned before, I do not dispute the logic, convenience, or potential of these responses, but they have clearly failed to solve problems that can only be solved with a much more complete and transformative vision. The entities serve their purpose but then they become costly. In any case, they depend on individuals. It is in this context that the main characteristic of the government’s first stage, the Pact for Mexico, was relevant.

The Pact for Mexico was to be the great solution to overcome years of conflict and legislative paralysis. Although in previous years a large volume of legislation has been approved and there was broad recognition that the country needed major reforms to advance toward development, none of the

legislation substantially changed the economic structure. The Pact achieved a key goal –the reforms’ approval– and opened up channels which could eventually translate into a significant economic improvement. However, it did not enhance growth. The government’s argument that reforms take time to materialize and impact economic growth is not only reasonable, but entirely logical and legitimate; nonetheless, the problems experienced by the country since the adoption of the reforms show that there is a much deeper and more important issue that the Pact hid rather than solved. That problem is the structure and distribution of power.

“For the PRD, the idea of a Pact provided invaluable political cover to become a working and loyal opposition while gaining credibility as a party capable of governing as well.”

The Pact was a great idea proposed by the PRD in order to share the political cost of reforms. For the PRD, the idea of a Pact provided invaluable political cover to become a working and loyal opposition while gaining credibility as a party capable of governing as well. For many years after the conflict-ridden elections of 2006, Lopez Obrador had de facto intimidated, some would say kidnapped, the PRD, forcing it to be an intransigent opposition, thus alienating the party from potential voters that wanted an alternative on the left, but one that showed willingness and ability to govern. Hence, once Lopez Obrador had quit the party, the Pact provided a unique opportunity for PRD to appear statesmanlike. The PAN also joined and in this way the three parties achieved something that had seemed impossible in the previous decade. Despite the logic of acting like statesmen and assuming the political costs of the reforms, the PAN and PRD’s decision to reach an agreement with the PRI seems odd, mainly because if things went well with the reforms they would not lose anything but if it all went wrong they would put everything at risk. On the other hand, the PRI used the Pact as a way to advance its reforms swiftly without opposition

in Congress, knowing that if results were good, they would be seen as the winners and, if things went poorly, the losses would be shared.

The Pact served its purpose and the country now has a radically different constitutional platform than the one created during the first half of the 20th century; although, given the way in which the country works, the existence of laws does not guarantee that they will be applied or that the reforms will be implemented. However, once they have been written, the potential for change is clearly vast. But the discrepancy between the reality on the streets and the one in the Constitution is an example of the main problem that afflicts the country. The Pact showed that, ultimately, the problem does not dwell in how easy or difficult it is to approve legislation but in the lack of actual capacity to govern. The question is why.

Governance issues can be seen in the conflict in the political-governmental world between means and ends a confusion that is a reliable reflection of the problem of power. This confusion between means and ends is evident in the Pact for Mexico: rather than being a means to achieve certain goals (a transformed country and instant progress, in the rhetoric of the Pact signers), the Pact ended up being an end unto itself. This made it unsustainable for its sponsors. The Pact changed the legal structure of various sectors and activities, creating new contexts for the functioning of markets and institutions, all of which offer, potentially, opportunities for future change. The same confusion prevails in the field of security where, for example, the capture of drug lords has become an end unto itself rather than a means to reduce violence and dismantle organized crime. The means keep ending up being the goal.

The problem of governance has two contrasting dynamics. On the one hand, the country has been virtually without a government for decades. By this I mean that the inability to manage public goods, to protect the citizenry, to solve judicial disputes, and even to pave streets is ludicrous. Mexico's system of government belongs to a different era, one in which things could be resolved by acts of authority and where disagreements that naturally occurred with a change of administration were tolerable. This has long ceased to be true: first because matters that require attention are ever more complex, expensive, and depending on the expertise of specialists to resolve; and secondly, because the country requires services that operate on a regular basis, without which it is impossible for companies to produce, compete,

and generate wealth and employment. Mexico's principal major deficit is an absence of government, a phenomenon that is aggravated at local levels.

The other dynamic is related to the problem of power. The Mexican system of government emerged from the 1910 revolution and had the wisdom of including its victors in what would later transform into the PRI. However, as the country has been transformed in recent decades, the power structure has remained almost the same. For the country to progress there will have to be a tackling of deeper problems than just the process of legislative approval. Power relations will have to be redefined. That process will not be simple or quick. But it is still essential.



ER NANDO

NOZ

STRITO XII
ES



PARA SEGUIR
PROGRESANDO

PART 2.

The Past is not an Option

Power and the comeback of the PRI

“Of all forms of power, perhaps the greatest is arbitrary power, because it asserts the will of an actor independent of any other influence; it is the ability to set oneself above a system that allows a ruler to be the defining force within that system.”

David Rothkopf

The PRI's return to power in 2012 was not exactly what its members expected, especially the heirs to the party's ancient and conservative factions led by newly elected President Enrique Peña Nieto. The project did not attempt to exploit the obvious structural advantages that have historically characterized the PRI to move towards the modern and comprehensive development project that was cut short by the contradictions of the PAN's era of reforms and inability to govern. Rather, the new government's project was one of power restoration, a recreation of the 1960s. The project came along with a package of reforms, some of them bold and ambitious but at their core incompatible with the President's objective. This is the fundamental reason for the paralysis from which country currently suffers. The current stagnation and disillusionment did not happen by chance.

The current situation makes it difficult not to remember a famous saying of Talleyrand, a statesman from the French Revolution era, regarding the Bourbon aristocrats' return from exile: “They had learned nothing and forgotten nothing”. Like “the new PRI”, and despite the promises of efficacy and leadership, its unique and fundamental difference with the administrations from the 1980s to 2000 that acknowledged the urgent need to pursue a series of reforms and attempted to carry them out, the current

government has been proven to hold no more than a provincial view of government and is merely clinging to power.

The comeback of the PRI was not accompanied by two fundamental questions: why was it defeated in 2000? And why did it win now? The team of the victorious candidate claimed that the circumstances in the 1980's led to disenchantment but current youth had no prejudices against the PRI, which is a plausible factor. However, the problem for both the current government and the country was that the past decades were filled with crises and changes, some intentional and others resulting from the government's lack of ability or the conditions themselves. Ignoring this context led to an erroneous assessment of the country's reality. Indeed, following the logic of the two visions addressed in a previous chapter, the current government has a vision that is more amenable to a return to the past, regardless of the fact that it has sought potentially important reforms. As in the eighties, the contradiction between the regime's political and economic goals persists.

Today, more than three years after the start of administration, the government still does not understand why its project was incompatible with reality and why it remains stagnant. The "new" PRI-istas did not bother to analyze the important changes that the country had experienced both as a result of the reforms in the eighties and nineties and the fact that the PRI lost the Presidency in 2000. Even upon its return, the aforementioned party is nothing more than a caricature of its former self; nonetheless, it has the goal of restoring old traditions, starting with the all-powerful Presidency. The PRI that came to power was not only not reformed, it never understood why political and economic reforms were undertaken in recent decades. Its virtue was to wait for the PAN's lack of governing skills to self-defeat them.

The new government disregards a simple and visible fact: the reality of the country in 2012, when it won its election, was not the same as when the PRI left power in 2000. But this was not obvious at the beginning because the reform project suggested that the new government had an ambitious development project and had asked itself a crucial question: how to build a modern country in the current circumstances? However, despite the reforms, evidence now shows that the main concern was to restore the ability to impose the party's will rather than developing creative and innovative ways to govern with a future-oriented vision.

The defeat of the PRI in 2000 changed the reality of power because it decentralized it (and because this power vacuum was filled by the Governors, legislative leaders and “*de facto* powers” that emerged after the PRI’s collapse). The mere pretense of restoring the structure of controls prevalent in the sixties is laughable. As Solidarity leader Lech Walesa said after the defeat of his party against the old Polish Communist Party, “Turning an aquarium into *fish soup* isn’t the same thing as turning *fish soup* back into an aquarium”. Despite all the advantages that its organization and machine that it comes with, the PRI returned to a country that was structurally different compared to when it left power.

The power structure changed but the country has yet to find an effective way to be governed. This is the point in which the current government could have made a substantial difference, but the goal of restoring power prevented it from implementing even a project that was perfectly compatible with its skills albeit with more realistic goals.

Although it is unlikely that the country will return to a political structure like that which existed in the fifties, the great risk of the recentralizing project imposed by the administration of Enrique Peña Nieto is that, paradoxically, it can turn into a source of instability. On the one hand, the government has implemented a set of regulations --but it has done so without effective control. This has led to the absurdity of making the President responsible for every event or situation that happens in the country (Ayotzinapa is the most notorious example). But even circumstances that might seem secondary affect the already weakened government control. For example, the recentralization of the relationship between the federal government and the teachers will be an important issue in the 2018 Presidential campaign. At the same time, the wage negotiation that will take place in May of that year --weeks before the Presidential election-- will put a lot of pressure on the federal government. Moreover, as discussed later in the chapter dedicated to security and economy, although there is a need for a strong State, that strength must not depend on power centralization but on strong institutions.

Part of the reason that the country was unable to adapt and modernize the structure of government has to do with the personal skills of those who were responsible for leading the country’s destiny in the past. Much of it, though, is the result of issues that have taken place not only from 2000 onwards over the past five decades. The country today has a governance

structure which was very appropriate for the mid-twentieth century, but is totally incompatible with the national and international realities of today's world. The country lacks an effective system of checks and balances that clearly defines the areas of action of all authorities. Rather than lead a transformative project, thus leading a process of political change, the government remains stuck in the internecine battle between those who want an idyllic democracy and those who want all the benefits for themselves, ignoring the example of many countries which shows that a nation will be successful when the best possible arrangement that will make it work is achieved.

Sadly, none of the political forces, starting with the government, are operating by this logic. Everyone wants to keep power and they are committed to skew every piece of legislation, negotiation, and public act to maintain their share of power and business if they are unsuccessful. This is, of course, the natural logic of any political context, but the irony is that President Peña has skills that would have allowed him to lead the large and ambitious political transformation he originally envisioned in his proposal for economic reforms and which distinguish him from his

“The country lacks an effective system of checks and balances that clearly defines the areas of action of all authorities.”

three predecessors. A government with a visionary development project, like the one Peña Nieto proposed, could have tackled these vices and built a new platform that would include

everyone. Unfortunately, the administration was more concerned with getting back to power than with having a plan on what to do next, so it passed several reforms but forgot what really counts (and is most difficult): their implementation.

The country today is no longer the one dreamed of by the PRI in which everything was solved with internal negotiations and where everyone, including the losers, ended up winning. Mexico today is a highly decentralized country in which the logic of producers is that of their customers and the markets; in which Governors seek to service their clientele (and their own pockets); and the everyday Mexican citizen tries to survive. Although the PRI was the indisputable winner in the 2012 elections, the percentage of its victory was significantly less than an absolute

majority, which also showcases another feature of Mexico today: the era of overwhelming majorities disappeared from the political map some time ago and it is not likely to come back regardless of the creativity, tricks, and devices that electoral experts might use.

The problem of power that affects the country goes beyond the PRI. The country has become enormously complex, reflecting a modern, demanding and diverse society within an equally heterogeneous economic scenario. Anyone who wants to govern Mexico cannot ignore two factors: first, power was decentralized and those who hold it have vastly different perceptions of reality. For the PRI, Mexico has always been a democratic country; for the PAN, democracy arrived in 2000; and for the PRD (and certainly Morena, the Movimiento de Regeneración Nacional or National Renewal Movement) democracy is yet to come. These differences are not resolved through the media or with gimmicky solutions—for instance, the use of a subordinate party that captures a part of the opposition, as is the case of the Green Party or of arrangements like the Pact, which ended up being phenomenal instruments of corruption—because none of them tackle the fundamental issue: the absence of mechanisms to process conflict. All of the aforementioned is a result of the old power structure's breaking down and the lack of a new one that will fit with the current reality.

The poor institutional structure that characterizes the country nowadays is the second factor that has changed. Instead of adapting and adjusting institutions or creating new ones (as was the case with the Supreme Court of Justice in 1995) institutions today are essentially the same as in the past, even though they no longer fit with reality. There is perhaps no better example of this than the case of the police force and the judiciary, whose structure, logic, training and *modus operandi* have nothing to do with the reality that characterizes Mexican society in the 21st century.

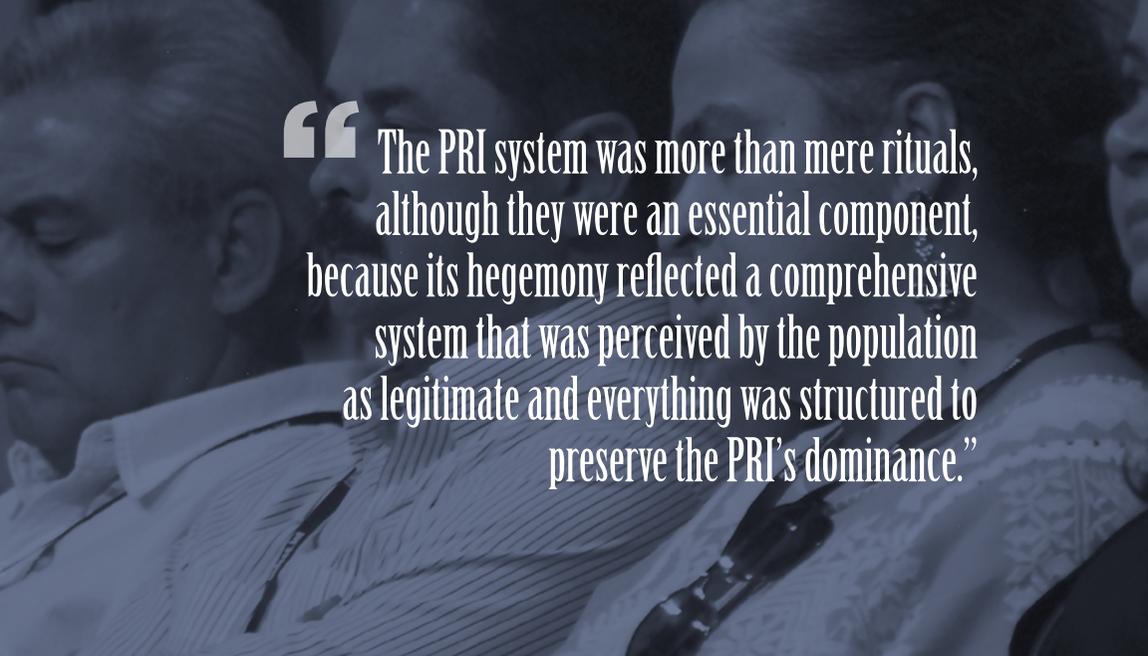


But it used to work before...

“Every great revolution has destroyed the State apparatus which it found. After much vacillation and experimentation, every revolution has set another apparatus in its place, in most cases of quite a different character from the one destroyed; for the changes in the state order which a revolution produces are no less important than the changes in the social order.”

Franz Borkenau

Those who idolize the old PRI system talk about the predictability that characterized it. The rules were clear, the values were consensual, and the risks were known. Whoever was part of the system knew that there were ups and downs but that loyalty was always rewarded. Being “institutional” was a distinction reserved for those who had lived through political victory and disgrace. Those who had crossed the desert were not exceptional. The system worked through a combination of loyalty and hope: loyalty to the boss of the moment and hope for political redemption. A natural order emerged: good behavior was rewarded and dissent was penalized. There was order.



“ The PRI system was more than mere rituals, although they were an essential component, because its hegemony reflected a comprehensive system that was perceived by the population as legitimate and everything was structured to preserve the PRI’s dominance.”

The old PRI order was not based on law or legality but in that peculiar misnomer that was the system of “unwritten rules” which were nothing more than loyalty to the President (as well as his rules) and a respect for protocol. The interesting thing is that the combination of these two elements was a factor in the stability that distinguished the country for decades. While the system conceived by Plutarco Elias Calles in 1928 failed to consolidate a “country of institutions”, as when he proposed the creation of the National Revolutionary Party (the PRI’s predecessor), the great achievement was a regime of order and stability whose foundation was the six-year term limit for the Presidency and loyalty to the current President. The PRI system was more than mere rituals, although they were an essential component, because its hegemony reflected a comprehensive system that was perceived by the population as legitimate and everything was structured to preserve the PRI’s dominance. Mechanisms, rituals, protocol, and values (starting with corruption as the cement that held the whole structure in place) would not pass the test of an idyllic democracy that is often dreamed about today (and which has been demanded by various international organizations, especially those dealing with human rights), but that does not take away the great merit of having achieved an era of peace and stability in stark contrast with most countries in the region. The PRI system was not successful because of its attachment to the law or formal rules but because it achieved a semblance of order that was satisfying enough to sustain its legitimacy.

In one of his moments of depression and melancholy, José López Portillo (1976-1982) claimed to have been the last of the Revolutionary Presidents. Indeed, the author of the 1982 crisis broke all the rules of the system and thereby started the era of economic meltdowns. Until the eighties, all post-Revolution Presidents had been part of the Army or lawyers, both professions inherently committed to protocols and formality: an attachment to established, repetitive and predictable patterns and a foundation of reliability on which society could depend. Thus, while the careers of individual politicians experienced ups and downs (the result of what was called the “wheel of fortune”), society knew that there was a minimum standard from which they would never deviate: order. Some Presidents emphasized the left while others, the right, but no one went out of the accepted canons of that time. In addition, attachment to protocol generated confidence among entrepreneurs and the Presidents understood that this was an essential factor for stability. Everyone played the game.

The era of crisis began in 1976 and ended (hopefully!) in 1995. In those twenty years of crisis, the country lost its historical stability as well as its

“What was once full respect for the “unwritten” rules suddenly became legislation drafted by economists (instead of lawyers) that very often turned out to be indefensible in court.”

sources of trust and economic viability.

Changes in the global context had much to do with the disappearance of the “minimum” platform that had worked historically but the biggest change was the fact that the system held on to the past while having no

ability to anticipate and adapt to the transformation of both Mexican society (conclusively shown in 1968) and the global economy.

The eighties saw the arrival of technocrats who came with new approaches that clashed with the old system. The economy was liberalized, state companies were privatized, and there were new forms of economic management which were more attached to international rather than historical standards, but there were limits. Despite the new approaches, the old ways prevailed: personal favors were always possible and, thus, achieving complete modernity was impossible. The reforms in the eighties and nineties

were more visionary and comprehensive than in recent years but they had similar limitations: economic or political interests could not be touched, nor could the monopoly on power be jeopardized. This limitation is largely responsible for the inability of the country to surpass the obstacles to achieving high economic growth rates. Paralysis is not a product of chance.

The economy was not the only thing that changed: attachment to protocol also faltered. What was once full respect for the “unwritten” rules suddenly became legislation drafted by economists (instead of lawyers) that very often turned out to be indefensible in court. The end of the protocol-obsessed country was accompanied by attempts to codify a partially open economic system that never fully consolidated. Thus, although the economy achieved some good years of growth, ups and downs have been the constant since the late eighties.

Mexico never abandoned its past and therefore, failed to build a different future. The most extreme example is the current government whose motto is to forget the future and return to what used to work in the ancient era of the old PRI system.

Order is a necessary condition for the progress of a nation. Without order, everything is an illusion because the propensity for chaos and instability is permanent. This does not imply the need for a system inspired by Porfirio Díaz (1876-1910) that is devoted to “order and progress”, but rather to the fact that Mexico has to find institutional mechanisms, ideally within its precarious democracy, to consolidate a minimum platform of stability and trust as the old system managed to achieve. Today’s world is nothing like the one of the 1950s but there is something that never changes: the need for people to trust their leaders. That is something that even Mao, Leninist and Communist, understood from the beginning, but which the Peña Nieto government is still spurning.



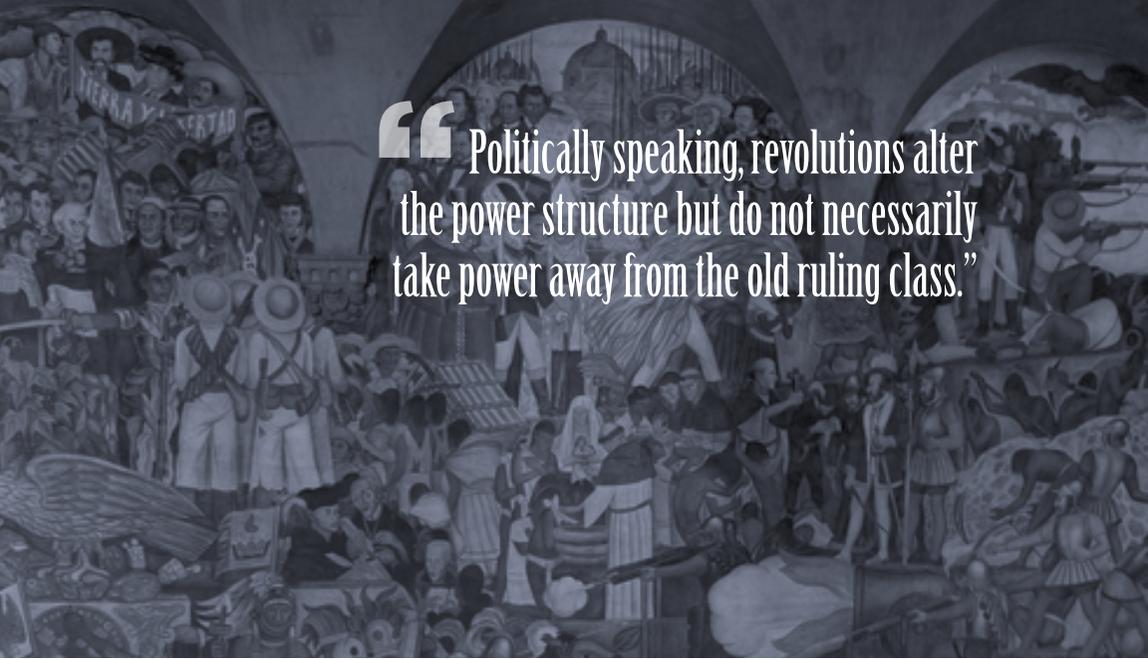
Sons of the Revolution

“A revolution is not a bed of roses. A revolution is a struggle between the future and the past.”

Fidel Castro

Revolutions, argues Crane Brinton, are often conceived as “a cataclysmic break with the past”. A revolution, in this reading, “marks a new era” that “forever ends with the abuses of the old regime.”³ At the same time, he continues, many of the instigators or believers in a specific revolution end up disappointed and perceiving that, ultimately, nothing changed. From one extreme to the other, it is obvious that revolutions transform laws, institutions, habits, and forms of interaction between people. Along the way, many revolutions generate myths both about the old regime as well as the new, becoming key elements of the new ideological hegemony of the winning group.

Politically speaking, revolutions alter the power structure but do not necessarily take power away from the old ruling class. Some revolutions



“Politically speaking, revolutions alter the power structure but do not necessarily take power away from the old ruling class.”

integrate those who were vanquished into the new political structures, while others exclude them from the new institutional design. Regardless of subsequent operation of the system of government, where every country that successfully completed a revolution (such as the cases of England, China, Russia, France, Cuba and Mexico), generated its own form of government, it is interesting to observe and contrast the way in which the recently emerged regime manages its own ideological approach, because the limits and the context of subsequent political activities emanate from there.

Revolutions, argues Samuel Huntington, are rare and a typically Western phenomenon of modernization⁴. They are specific historical phenomena that violently destroy existing institutions and mobilize the population as the political base of the new regime while establishing their own power platform. These platforms typically represent the correlation of forces at the time which, in a revolutionary setting, involves privileging the leaders of the winning side.

In a common revolutionary situation, the new power structure excludes the losers, creating divisions and sources of conflict mainly because the elite from the old regime continue to wield power by controlling activities or groups in all areas: the economy, politics, and society. As long as losers are excluded from the new institutional arrangement conflict tends to increase,

usually starting with an underground struggle for ideological control of society. Thus, the ideological cleansing becomes a necessity for the new regime because it becomes an essential factor of legitimacy. In Mexico's case, causes like non-reelection and the State's ownership of sub-soil resources acquired an important dimension because they transcended everyday issues, becoming the *raison d'être*, justification and rationale for the new regime. Similarly, the use of a common enemy as a strategy for internal legitimacy can convincingly explain the relationship with both the United States and Cuba over the decades in which the PRI (a party that was a result of the Revolution) held power.

Thus, the regime that emerged from the Revolution developed practices that are logical and perfectly explainable given their origin, but which also become limits to the ability to implement government actions. For instance, in the eighties, the Mexican government decided to reform the economy and initiate a process of rapprochement with the United States,

“In the case of Mexico, the winners of the revolutionary conflict built a political system that was both inclusive and authoritarian.”

elements that constituted an affront to the dogmas of the revolutionary religion and were, therefore, factors in the political rupture (as happened with the departure of Cuauhtémoc Cardenas and his supporters from PRI in 1987).

The mere idea of redefining factors that the Revolutionary mythology had transformed into dogmas was seen as an act of apostasy for believers in the Revolution's legacy.

When there is no precedent of a similar revolutionary situation, institutional arrangements tend to favor the inclusion of various political forces, whether to maximize their participation (as in the case of democracies) or to control their bases (as occurs with authoritarian systems). The way in which such inclusion is administered, as well as its objectives, determine the nature of the political regime. Thus, each system ends up finding its own equilibrium.

In the case of Mexico, the winners of the revolutionary conflict built a political system that was both inclusive and authoritarian. By incorporating most of the forces that contended in the armed struggle into the new political system, the establishment sought to create institutional means for

channeling conflict. At the same time, the ultimate goal was to control the whole political spectrum in order to strengthen the regime and preserve stability. The development of an ideological hegemony came as a necessary complement to institution building. In this context, the country used the education system (from teachers to textbooks) to build legitimacy for the regime, create a common enemy (the United States), and develop a rhetoric that combined the instruments designed to build and preserve the new system's hegemony.

Many of the disputes that the country has experienced in recent decades are derived from that hegemony since, by definition, market-oriented economic reforms and those that are moving towards a pluralistic regime threaten the post-revolutionary hegemony. Thus, a government that emerged from a revolution trying to reform itself ends up facing an internal struggle with the original bastions of the regime's legitimacy. Hegemony demands the existence of believers that, whenever the scriptures from which that legitimacy emanates are altered, vehemently reject any changes. Like religions, modifying dogmas can create an ideological schism.

Mexico has had two decades experiencing the throes of an ideological schism that has yet to be resolved because the reforming governments have been strong enough to hold on to power but have lacked the necessary drive to move forward and conclude the reform process. Meanwhile, those who dispute the regime's legitimacy and support the revolutionary dogmas have been politically weaker but extremely effective in ideological terms; they have systematically undermined the regime's legitimacy as well as that of the system in general. Given that many of the priests of the Revolution are based outside the PRI, this dispute clearly transcends the party in power.

The struggle for power in Mexico follows two separate but parallel paths: one is political-electoral while the other is ideological. The reforms of recent years have altered the fundamental underpinnings of the 1917 Constitution, giving space to those who dispute the PRI regime's hegemony. As long as reforms do not result in concrete benefits for the population, the ideological dispute will persist because it is ultimately an open and stark fight for power.



Authoritarian culture and the Presidential succession in 2018

“The overconcentration of government powers without checks and balances is the root cause of so many social problems.”

Deng Xiaoping

The electoral processes that take place on a regular basis are illustrative of the great paradoxes that characterize Mexico. The country has taken remarkable steps in electoral matters but there are still conflicts, slander and, above all, distrust. Although several parties and independent candidates are actively involved, an important amount of voters –as well as many parties and candidates– believe that an election is only legitimate when they win but not when they lose. What does this say about the country, of its politics and of its ability to overcome that permanent source of conflict and illegitimacy?

The issue is not new. The current political system represents an evolution of the old PRI system; rather than an actual regime change, the past decades showed a transition from a single-party regime to one of three parties enjoying the same rights and privileges as the PRI exclusively enjoyed

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What does this say about the country, of its politics and of its ability to overcome that permanent source of conflict and illegitimacy?”

before. The PRI was never a political party, but rather a system of political control which used co-option and the distribution of benefits, always using the threat of repression, to preserve stability and generate loyalty. Its bureaucracy became a predatory system which lived from extracting rents from the political system through its access to public offices and businesses linked to them. That structure and the culture derived from it eventually included and subordinated the opposition parties that were incorporated into the system of privileges since 1996.

A glaring paradox of the evolution of the electoral system in recent decades is that the three aforementioned parties have been losing political ground against the unstoppable growth of other party options, many of them so limited in ambition that they happily accept budgetary allocations tied to each election's results rather than actual executive or legislative power. Thus, although it is extremely difficult to create (and preserve) new parties, they keep on appearing. The subsidy that the government provides to registered parties can explain this second paradox, but it is interesting to see that preserving a political party's registry is incredibly difficult, as if it were a mechanism designed to protect an oligopoly. What is certain is that the electoral-party system puts distance between the parties and the voters so as to protect the parties and the government from the general population,

thereby preserving the authoritarian culture from which the system originally emerged.

The contrast with South American nations is noteworthy. While many of these countries experienced very repressive dictatorships, the PRI system in Mexico achieved stability without, apart from a few exceptions, resorting to repression. With its preference for control and co-optation Mexico went through a long era of progress. However, when those nations achieved democracy, their citizens could clearly distinguish the new regime from the former one. The contrast was black and white: no one had doubts that a civilian government was different from a military dictatorship. That distinction was never possible in Mexico, the PRI regime was authoritarian and its culture and heritage are preserved not only within the PRI and its associates but also among the members of the PAN that denounced the PRI regime from its inception and could not alter the authoritarian culture during its two presidencies (2000-2012). The main point is that authoritarianism remains an observable feature in the way parties choose their candidates, accept or reject election results, and, perhaps, even more, in the gap between citizens and government.

Authoritarianism will work as long as the population is submissive and accepts being controlled, that is to say, as long as the control is seen as legitimate, an appearance that the PRI was masterful in creating for generations; anger against corruption shows that the legitimacy no longer exists, making an authoritarian system unsustainable. The 2015 midterm elections showed that the population has learned to use their vote to reward and punish; it does not waste its weariness but channels it. The three main political parties went from more than 90% of the vote in 1997 to barely 60% in 2015. The fact that the three major parties are losing representation is extraordinarily revealing. Mexican authoritarianism may be deeply rooted in society and in its ways and procedures, but it has lost all legitimacy.

This reality puts Mexico's politics fully into pre-electoral mode, three years before the next presidential election of 2018. The environment within the government remains impassive, acting like nothing has changed, and suggesting that the President will handpick his candidate as the *ancien regime* used to do. The opposite case is seen in the PRI's legislative faction and, more clearly, with the Governors. If the President keeps his team intact, there will be a clash of forces. Conversely, if there are changes and the party

presents a range of potential candidates, the probability of an internal will decreases. The way in which the PRI solves (or fails to solve) its dilemmas will set the tone for the other parties.

Each of the opposition parties is experiencing its own process and crisis. Some candidates are already obvious while others will have to contend for and win party leadership posts and other nominations. Something particularly noteworthy is the emergence of a new political “species” in the opposition parties: the pre-candidates whose main characteristic is being former members of PRI. Nowadays, the possibility that all (or most) candidates contending for the Presidency are current or past members of PRI cannot be ruled out. What would such a scenario mean?

The monopoly on power exercised by the PRI for many decades created a political class with skills in power management. The fact that other political parties were systematically excluded from power partially explains the PAN debacle. This also explains the presence of so many political players originally from the PRI working in other political entities. The key question is whether any of these potential candidates and their parties would have the vision and capacity to propose a reform of power that would transform the country at its core. If the authoritarianism of the past has stopped working, how would the likely candidates replace it? The future viability of Mexican politics will be determined by the interaction of the proposals and coalitions of those candidates as well as what happens within the government and the PRI. The paradox is that, whoever wins —both within the parties and in the race for the Presidency itself — the PRI culture and the illegitimacy that a majority of the population sees in it will not change .





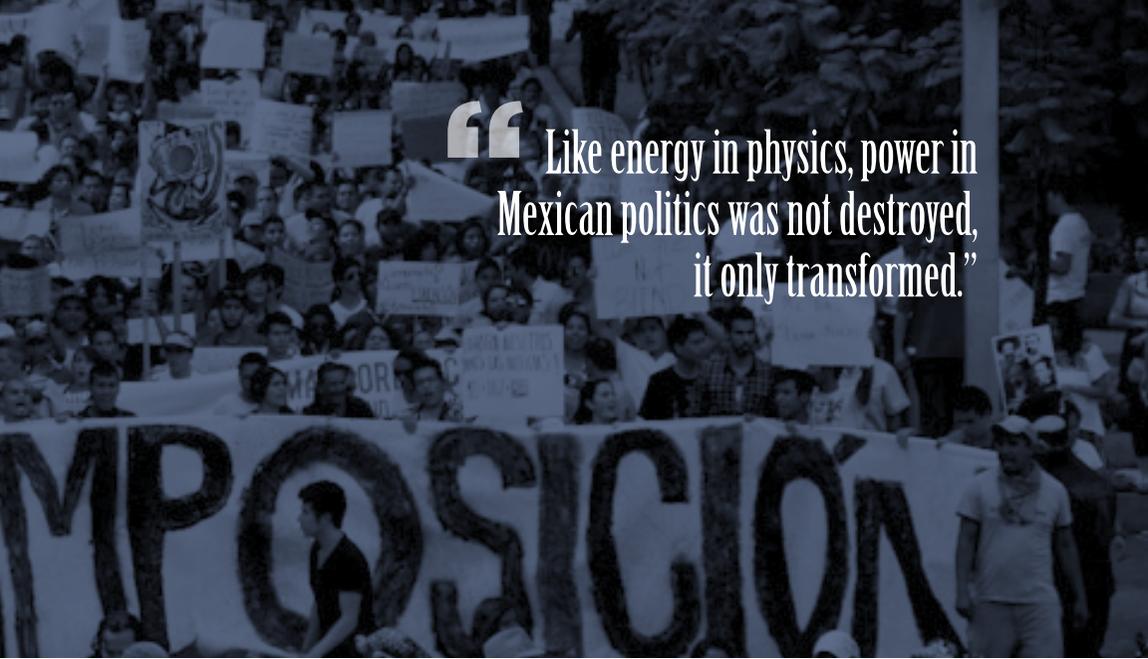
Concentration and dispersion: the paradox of power

“Mexico is the only country in the world that evolved from democracy to feudalism.”

Josefina Vázquez Mota

The peculiarity of power today is that it has been spread but has not been institutionalized. Worse still, the old model of concentrated Presidential power has been recreated at the local and state levels where governors and various labor, business, political, and criminal leaders control centers of power. That is, the country went from a Presidency with exaggerated power to a network of various actors with equally exaggerated power. The phenomenon of power has not changed, but its dynamics are radically different from those that existed in the past. Like energy in physics, power in Mexican politics was not destroyed, it only transformed.

The political dynamics of the last decades have been exceptionally complex. Mexico went from a political system that revolved around the Presidency to a system with multipolar power. The transition was not accidental and reflects two core features of recent developments in the country. On



“ Like energy in physics, power in Mexican politics was not destroyed, it only transformed.”

one hand, economic liberalization inexorably altered the strength of the President and of the government in general. And, the defeat of the PRI in the 2000 elections forced a separation, or “divorce” of the Presidency from the PRI, which led to the migration of power from that “axis of two” to a large number of political, business and union leaders, as well as organizations, and groups.

The strange thing about the political evolution of Mexico in recent decades is that the implementation of the enormous changes that resulted from government decisions and negotiations with various parties and interest groups was not really planned. After all, it is not that this political development was the result of exogenous or unforeseeable circumstances. Rather, it was a series of reforms, first in the economy and then in the electoral field, which changed the dynamics of power. But no one foresaw its consequences or prepared suitable conditions to deal with them.

Economic reform was the result of a comprehensive vision of productive transformation aimed at diversification and the integration of the Mexican economy into the world economy. The peculiarity of the project of economic reform that started in the eighties was not its comprehensiveness but its irrationality: it was pretended that the economy could be reformed without altering the existing political balance within both the PRI apparatus itself and the government and without altering the relations between the

government and the various economic and social agents. Part of the latter had to do precisely with the reality of power in the country: economic reform did not cover sectors, entities or politically sensitive activities. Thus, the two factotums in the energy sector --CFE and PEMEX-- were left out of the reforms along with the traditional manufacturing sector and the sectors that produce goods that are not traded internationally and whose common denominator is that they are dominated and exploited by powerful political or trade union leaders.

What did change in the economy were the political relations among the stakeholders. The project of economic reform and liberalization was a response to the enormous technological changes that overtook the world and altered the way to produce and the rationale for investing which impacted the growth potential of the Mexican economy. In particular, these circumstances created new realities and on two fronts in particular. First, the so-called globalization of manufacturing involved the specialization of factories and plants around the world, starting in industries such as

**“Economic liberalization
modified the domestic
relations of power forever.”**

automobiles and electronics, in order to raise productivity levels, reduce costs, and bring production closer to the source of raw materials or markets. This created enormous opportunities to attract investment, as long as appropriate conditions were

satisfied. Second, thanks to the revolution in communications, the financial sector worldwide became integrated, creating a global market that, in practice, transcended local restrictions and national regulations. That was how bondholders emerged with the power to make even the most powerful governments submit. In these circumstances, economic liberalization entailed national and international entrepreneurs becoming equal in global markets (at least in terms of tradable goods and services): Mexican groups began to act as global consortia, becoming indistinguishable, for the purposes of their relationship with the government, from investors elsewhere. Economic liberalization modified the domestic relations of power forever.

Regarding power relations within Mexico, in the eighties the once-almighty Presidency began to recognize the limits of its power, which slowly established the conditions for reforming the economy. The negotiations with

creditor banks, international investors, and domestic entrepreneurs became factors of power that were not subordinate to the government as they were in the past. For its part, the necessity to keep the productive plant running led to an equally important change in the relationship between employers and unions: as the growth in imports forced Mexican companies to raise their levels of competitiveness, labor disputes went to the sidelines; survival became the only thing worth discussing. Thus, employers and trade unions began to march hand-in-hand, dramatically altering union power in sectors subject to competition and therefore, their relationship with government.

The PRI's Presidential defeat in 2000 was another factor in the erosion of Presidential power. The formal change entailed by the alternation of political parties in the Presidency was significant, but its real importance was the loss of the PRI-Presidential duality as the core of political control in the country. With the divorce of these two entities, the power concentrated there went to the hands of Governors and what became known as "factual powers": groups, unions, companies, and leaders who dominated sectors, activities or key factors of power, that acquired virtual veto power over decisions affecting their sources of power or business, political, or economic dominance.

"Ultimately, the country ended up with a political system in which a network of power controls all major decisions but no part of it has enough power to govern effectively (or, as in the past, to impose its will)."

In the economy as in politics, the dynamics of power in the country changed as a result of the reform and transition

in each of the aforementioned areas. Since this change in dynamic was not foreseen or contemplated in the reforms or in formal agreements around the reforms, power was dispersed but not institutionalized. That is to say, Mexico went from a country with power hyper-concentrated in the Presidency to a power concentrated in different cores, with neither one subject to effective checks and balances or accountability. That was how the Governors became unexpectedly powerful and began to command a substantial part of the overall public budget and, also, how some leaders, especially government unions, assumed a capacity to threaten the Presidential power. The emergence of Governor Peña Nieto as the leader of the governors illustrates

the former; the behavior of the SNTE leader, Elba Esther Gordillo, is irrefutable proof of the latter. Power migrated but was not institutionalized.

Ultimately, the country ended up with a political system in which a network of power controls all major decisions but no part of it has enough power to govern effectively (or, as in the past, to impose its will). Although power remains highly concentrated, it is no longer concentrated in one place (or person) but in a network. This is the main reason why Presidents from 1997–2012 were unable to push their legislative agenda forward: they could not impose their will nor did they have the political skills to negotiate. President Peña showed a capacity for the latter, achieving the approval of his reforms in the first two years of his term, but an absolute inability to implement them as a result of the dispersion of power. The paradox is that this problem cannot be resolved by providing greater formal power to the President (for example by reforming the electoral system so that the party in government enjoys guaranteed legislative majorities) because the problem is not one of appearance but of the reality of power, that is, of the dispersion of power outside any institutional framework.

What Mexico needs is a new political structure in which power is institutionalized. The challenge is no different from what existed in the twenties of the last century when the PNR was created in response to the dispersion of power that emerged from the Mexican Revolution. In contrast to that time, the answer today cannot reside in the violent subjugation of the de facto powers. The challenge is to find ways to negotiate the structure of power and institutionalize it, putting the citizen at the heart of public life. That is to say, the challenge is achieving an effective democracy.



TODA LA HISTORIA DE LA SOCIEDAD HUMANA HASTA EL DIA ES UNA HISTORIA DE LUCHA DE CLASES.
... Para nosotros, no se trata precisamente de transformar la propiedad privada, sino de abolirla; no se trata de esumar las diferencias de clases, sino de la destruccion de éstas; NO SE TRATA DE REFORMAR LA SOCIEDAD ACTUAL SINO DE FORMAR UNA NUEVA.
—CARLOS MARX—



PART 3.

Unfinished Transitions and their Consequences

Incomplete transitions and their economic consequences

“Those who want to “spread the wealth” almost invariably seek to concentrate the power.”

Thomas Sowell

The concentration of power was functional when the Mexican economy was simple, protected, and dependent on the relationship between the government and the unions and businesses. As the economy diversified and experienced greater liberalization the concentration of power not only ceased to be functional but became a huge obstacle to the country’s development. Many of the imbalances afflicting the country today emerge from this contradiction: the old structures are no longer functional but many have been preserved and are now an obstacle to economic growth.

A modern economy depends on the existence of clear rules, legal certainties, and a stable political system. None of these circumstances occur in Mexico today because they are opposed to the logic of the power concentration.

In an interview, Woody Allen said he was “astounded by people who want to ‘know’ the universe when it’s hard enough to find your way around *Chinatown*.” This seems to be the case of the many changes experienced by the country in recent times.

In the past five decades, the country lived through a major collapse and two incomplete responses. The political and economic system that was built

by the end of the Revolution exhausted its power until it collapsed. Those who bash the various changes experienced in recent decades assume that economic and political reforms were voluntary when in fact they were the result of the lack of an alternative. In the sixties, the country began to see the beginning of the end of the old system. On the economic side, the balance of payments suffered as a result of an accelerated decline in the grain exports that were essential to financing imports of machinery and equipment. In the absence of those resources, import substitution was no longer sustainable. On the political side, the student movement of 1968 heralded the first outward manifestations of tensions that had been accumulating over time and which broke the PRI's hegemony.

With greater (or lesser) clarity of direction and common sense, by 1970 the country began to experiment in both areas but it was not until the eighties, after populist madness bankrupted the government, that a serious reform process began. The first reforms focused on the economy with the clear intention of making political reform unnecessary; but, after economic reform alone proved to be insufficient, political reforms were made as well. In both areas, but especially in the economic one, Mexico was an exception because it actually engaged in a reform process, even if often envisioning it without actually making the follow-on changes.

The two reform processes undertaken in the past thirty years say a lot about Mexican ways and procedures: there is a huge ambition for dreaming but unwillingness to actually get the job done; there are great aims but small goals; there is an understanding of the urgency of change but always without altering the essential; there is a bombastic rhetoric yet tolerance for special interests. In short, there is an understanding that the status quo is unsustainable but no decision or ability to actually do what's necessary to make the reform projects successful.

That is how the country ends up with incomplete reforms: many of them visionary, but in the end unfinished. The transformative vision in the eighties and the nineties as well as over the past three years has ended up being overwhelmed by reality. Some reforms got stuck because they encountered powerful interests that put them on hold; others wandered around due to the pettiness and/or mistakes made by their implementers, by the conflicts of interest that emerged from them, and, in general, by the perception of excessive costs that would result from affecting those who benefitted from

the status quo (in many cases the reformers and their allies themselves!). The reasons for the stagnation of reform are many but the consequences are few and quite concrete: the economy is not growing and the costs of stagnation are poverty, informality, and unemployment, all of which diminish the legitimacy of the ruling class while also driving disdain for it.

There has never been a comprehensive visionary project. In the political arena to match the one implemented for the economic arena in the eighties and nineties. In political-electoral

arena, starting in 1978 and through, the 1980's, partial and limited negotiations gradually created the conditions that required a broader agreement

“Mexico is in a permanent transition to nowhere.”

of fair competition starting 1996. However, although there was talk of a negotiated transition, this never materialized because a transition requires a precise and consensual agreement about its starting and finishing points. In the absence of such an explicit agreement, as it actually happened, nobody knows when the Mexican political transition began and there is no consensus about when it will end. Mexico is in a permanent transition to nowhere.

The paralysis in government decisions --some call it “mobocracy”-- is a frequent issue around the world. Mature democracies have been suffering from the phenomenon of interest groups that paralyze decision-making to defend their positions. Examples of this can be found not only in Mexico but in the United States and many European countries. This is why the Pact for Mexico was so well regarded worldwide. Although it was not very democratic it seemed to help break the siege of paralysis. Now it is clear that, in order to achieve this breakthrough, Mexico must learn more than just how to find its way around Chinatown. And it will only be possible with society's participation.

Politics and growth

The Mexican economy's inability to achieve high growth rates has been a policy focus for decades. In fact, at least since the seventies, there has not been a government that has not undertaken actions aimed at fostering economic growth. Some did so via debt-financed government spending,

others by ambitious reforms, and others by stable and reliable financial management. Although there were some good years, it is clear that growth has been significantly lower than the country's needs, what economists consider possible, and, in any event, the desired growth is driven by engines outside the control of the Mexican government. For instance, the two main sources of growth in 2015 were exports and domestic consumption. Most exports go to the US, while consumption has grown largely due to remittances that Mexicans living in the US have sent to their relatives in Mexico. In this sense, the true engine of Mexican growth is the US economy.

There are countless diagnoses that attempt to explain this phenomenon. Some emphasize security and infrastructure problems; others argue that it is due to the absence of the rule of law and the state's inability to enforce contracts. I have no doubt that all these diagnoses are part of the problem; but, I think there is a deeper problem that explains it all in a more convincing way. If one looks at the fact that foreign investment is growing at rates significantly higher than domestic investment it is not difficult to explain slow growth: while foreign investments have solid legal guarantees thanks to NAFTA, national investments are highly dependent on the mood of the government at the time. The fact that a government has the capacity to influence or decide the viability of a project is a very clear indicator that something is wrong because it reveals the reality of power in Mexico: a lack of legal guarantees for the citizenry and, in this case, domestic investors.

Mexico and the world

Mexicans have been waiting for the arrival of someone that will save them, a hope that is renewed every six years. This is the face of the authoritarian PRI regime: a vast system of political control that limited the population's capacity, making them wait for a change from above. While the old system seemed to collapse, its forms as well as its culture remain even after two PAN administrations --and the PAN emerged as a reaction to PRI's abuses. This situation creates two parallel and somewhat paradoxical realities: on the one hand, Mexican society yells but does not rebel; and on the other, the country changes much more and much faster than it seems.

The world is difficult when one looks ahead and scans the challenges that Mexico is facing and its seemingly limited ability to overcome them.

However, when looking back, it is striking to observe how much the country's reality has changed. Nowadays, Mexico is a manufacturing powerhouse, the population of the country can express itself freely, and living standards have greatly improved. Of course, none of this diminishes the country's shortcomings but it does put them in perspective.

The contrast of outlooks is an example of the way Mexico has evolved in recent decades. Until the late sixties, the economy was growing rapidly and the authoritarian political system (which enjoyed an enormous legitimacy) created an environment of order and peace. The federal government ruled the entire national life and took care of security with the methods available at the time. That idyllic world began to deteriorate because it did not generate escape valves to adjust the political setup and because the economic structure that sustained it stopped working which, in turn, sparked a crisis of growth.

From the beginning of the seventies, one government after another has developed attempts to answer the problem of growth. Some brought the country to the brink of bankruptcy (1970-1982), others built permanent structures such as the North American Free Trade Agreement (NAFTA), which contributed to the transformation of the industrial plant. However, as in the political sphere, this process of economic change has been hindered by power factors that benefit from the status quo. In contrast to transformational processes in other nations, Mexico has made attempts to change but has not had the willingness or ability to change the power structure in both economic and political affairs.

The political transition experienced by the country is a clear example of this. Although there was an initial agreement (1996) on the amendment of electoral rules to ensure fairness of elections, there was never an agreement on its starting point and even less so about when these targets were to be achieved. Thus, national politics remain as contentious as before and parties will only acknowledge election results when they are declared the winners. In other words, for the parties the election is democratic if they win but not if they lose. Thus, although the professionalization of the electoral bodies and the transparency of election processes is beyond reproach, about 40% of the population still thinks that what matters is not the process but the result⁵.



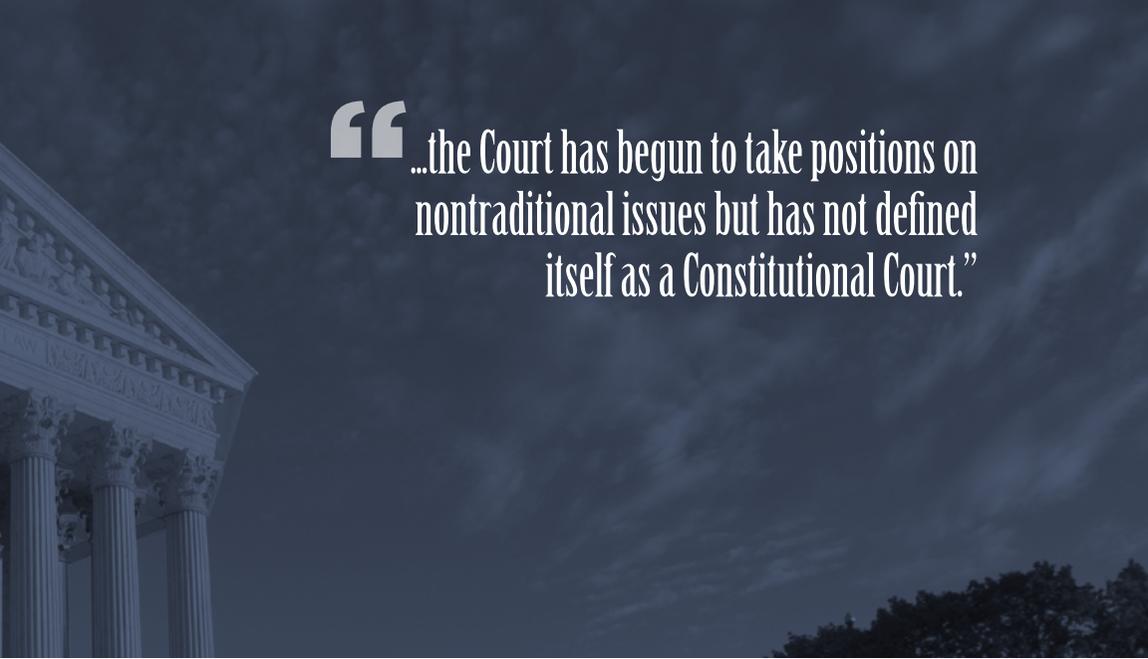
Power and the Supreme Court of Justice

“There is as yet no liberty if the power of judging be not separated from legislative power and the executrix.”

Montesquieu

The Supreme Court plays a fundamental role in ensuring the constitutional separation of powers. One of the three branches of government, its core function is to break the ties between the other two branches, the executive and the legislature. In the political reality that exists in Mexico today, the role of the Court is central because it is the only one of the three key structures of government that was recently renovated and operates under the criteria of today's world. In this sense, the political conflict in the country today requires the Court to assume a central role in shaping a new regime. That will require a Court that is much more aware of its role in today's environment.

The reshaping of the Court in 1995 was a key step towards its professionalization and earning the prestige that it has achieved in recent



“...the Court has begun to take positions on nontraditional issues but has not defined itself as a Constitutional Court.”

decades. But it is only one component of the system of justice. The reforms of 2011 and 2013 are additions to the original reform but Mexico is yet to have a solid and professional justice system which is, in the end, what really matters to the average citizen more than the successes, important as they may be, that the Supreme Court has had. Of course this does not diminish the fact that the significance of the Court is extraordinary and cannot be diminished.

In recent years, the Court has begun to take positions on nontraditional issues but has not defined itself as a Constitutional Court. It has made courageous decisions and broken one precedent after another, but it has not yet defined whether its function is to strengthen the Mexican government (understanding this term in a broad sense) or reaching a special place, a non-political niche, which redefines Mexican politics in a democratic era. In short, the Court is still defined as a body and an integral component of the Mexican State and not as a Constitutional court.

A Constitutional court sees itself as an independent branch of government that is still identical to the other two, dedicated to caring for both the letter and the spirit of the supreme document that regulates life in society. A political court adapts what is written in the Constitution to the everyday reality. That is, while in the first definition the Court is an independent

power, not concerned about the political whims of the moment, and dedicated to protecting the rights of the citizenry regardless of the adjustments needed to enforce them, the second definition sees the Court as a very limited state body that recognizes the limits and difficulties it faces in the daily exercise of governmental functions and represents the government in society. This is a difference not only of style but of essence. In recent years, Mexico has seen examples of both perspectives as if there were shame about or fear of taking a major leap.

Historically, the Mexican Court was in line with the political reality of a country where the ruling party not only dominated the executive and legislature but also exercised effective control over society through an excessively powerful executive. In that context, the Court did not have room to grow and fulfill the role that many of its peers in democratic nations see as natural and inherent to their essence. The big question in the new national context is whether the Court will follow the Spanish and American supreme courts in assuming the role of a constitutional court and substantively breaking the ties between the two other branches, or whether it will remain on the sidelines, opting for the less controversial role of sticking to the narrow limits of the law and settling technicalities rather than getting to the bottom of the issues involved.

An example is worth a thousand words. Let us remember the numerous cases of capitalization of interests against various banking institutions when the latter refused to pay back what the plaintiffs claimed rightfully belonged to them. The accusers argued that they made deposits for which they received promissory notes as stipulated in the terms of the contract. According to these contracts, which were typical of the years of high inflation, banks committed themselves to reinvesting the money from customers at an agreed upon very high nominal interest rate that was typical for that time. Years of reinvestments and compound interest produced a figure higher than the country's GDP. In their lawsuit, the accusers demanded a return of the money to which they were legally entitled. The terms of the contract were clearly a mistake by the bank: the lawyers who drafted the contracts carelessly failed to establish a deadline for the contracts or a limit on the interest rate. However, from a strictly legal point of view, the plaintiffs were basically in the right.

For the judiciary, the issue could be defined in two ways: as a contractual issue in which the rights of two contracting parties were in dispute or as

a matter of State interest, thus not protecting the party which is the right thing to do but instead protecting the government as a matter of course. At the end of the process, the judiciary chose to be a representative of the interests of the State, dismissing the case and forcing the private parties to negotiate a settlement. While it is clear that it was impossible for the plaintiffs to obtain the amounts requested, the question is how the Court acted in its ruling.

This is one of many examples, but it serves to illustrate the nature of the problem and, above all, the opportunity that the Court has. The overwhelming majority of matters pertaining to the Supreme Court in Mexico have to do with the writ of *amparo*, that is, an issue that requires a strict interpretation of the relevant law's text. Constitutional issues are very different but, in general terms, the Court has chosen to treat them as technical matters. Since the Court was reformed in 1995, it has not sought to expand its mandate except marginally (as in the case of legalization of marijuana, same-sex marriage, and the Florence Cassez case) so that it has not become a key factor in building a new democratic order. However, it is not possible to conclude from some important cases that there is a break with the past: the incentives that the members of the Court have led them to seek to satisfy political actors, opinion leaders, and social activists rather than to advance the cause of justice and the strengthen the independence of the judiciary.

Conceptually, the Court has two options: it can judge on form or on substance. While it certainly has courageously faced various controversial issues in recent years, it has almost always done so without getting to the core constitutional issue, instead remaining at a more superficial procedural level. So far, it has issued rulings that resolved disputes without getting into controversial and contested issues which would have required the Court to define itself, something that until now it has chosen not to do.

The dilemma of whether to become a Constitutional Court is not exceptional in the history of Supreme Courts, but it is the first time that Mexico has dealt with such a situation. To appreciate the significance of time and circumstance, it is worth recounting a time when the Supreme Court of the United States faced a similar challenge and how it solved it and thereby changed the history of that country. Thomas Jefferson was elected President in 1800, the first president from the Republican Party after 24 years of rule

by the Federalist Party. The new government soon met with cold reality in the form of the judiciary. Before leaving office, the previous administration (led by John Adams) had tried to fill the judiciary with judges appointed by Adams. Although they had lost the Presidency, the Federalists were in control of the judiciary through the appointments they had made in previous decades. The first thing Jefferson did was to repeal the law that had enabled Adams to fill the judiciary with his own colleagues. The second thing he did was not to deliver the remaining judges' commissions. One of them, William Marbury, who had already received the approval of the Senate but not the document which made the appointment official, decided to sue the Secretary of State (James Madison) in order to force him to make it effective. The dispute was referred to the Supreme Court and is known as *Marbury v. Madison*.

The Chief Justice of the US Supreme Court, John Marshall, immediately understood the dilemma before him. If the Court issued a ruling forcing Madison to appoint Marbury, Jefferson's administration would ignore it and the authority and legitimacy of the Court would be weakened. On the other hand, if the Court refused the right of Marbury, its ruling would seem biased in favor of the executive because of the Court's fear of reprisals. More important to Marshall, both responses would have undermined the basic principle of the supremacy of the Constitution and the law. The final decision drafted by Marshall transformed the American political system. The Court indicated that Madison should have delivered the appointment but then made another point: the law that gave the Court the authority to issue rulings such as the one Marbury demanded, exceeded the Court's authority as established by the Constitution.

With its ruling, the Court transformed the political system because it assumed new powers, starting with the power to declare acts of Congress and the President unconstitutional if they (in the opinion of the Court) exceed the powers granted by the Constitution. The ruling established that the Court has no business interfering with the President's discretionary powers while also condemning the partisan use of the Court by the Federalist Party. But the great importance of *Marbury* is that it established the Court as the arbiter of the Constitution, the ultimate authority on the founding document's letter and spirit. The Court became, *de facto* and *de jure*, a power equal to the other two and, thereby, acquired enormous respect and legitimacy. So important was the ruling that the Court opted to use its new

power in a moderate manner: a similar ruling only happened more than half a century later.

Even today there is still much discussion about the implications and consequences of the Marbury case but it can still be relevant to the situation in Mexico today. For starters, the American political system then, like the Mexican situation today, was filled with conflicts that emerged because of the lack of strong institutions. The Federalists despised Republicans for their lack of experience; there was a strong rejection of the central authority; and there was strong skepticism about the viability of democracy. Many politicians distrusted the ability of ordinary citizens to make appropriate decisions. Although the Marbury case deals with very different topics, the general environment was not totally different from what afflicts Mexican politics today.

Second, the decision handed down by the US Court in this matter sparked a fierce controversy about the specific powers of the Court and its role in a system with separation of powers. Both issues are controversial. With regard to the role of the Court in a democratic society, *Marbury* set a unique precedent: that the Court is equal to the other two branches and, therefore, there can be no primacy of one over the other. These three branches compete with and therefore balance each other. The decision drafted by Justice Marshall established an interesting principle: for him, the key was not to decide a politically charged lawsuit between the other two powers but to ensure that the rights of an individual were not violated, in this case, the rights of Mr. Marbury.

There was much discussion about whether the Court should be limited to interpreting the Constitution or, conversely, should be allowed to craft a resolution with the Constitution as a starting point and in light of whatever reality is at the time of the decision. Although there are purists on both ends, different Constitutional courts around the world have shown that decisions on this matter cannot be made *a priori*. Language is imperfect by nature and the Constitution should be interpreted and adapted according to the standards and needs of time when the case is decided. Madison, one of the original drafters of the US Constitution, firmly believed in a limited authority for the Court, a power that would be restricted to an almost literal interpretation of the Constitution. However, after *Marbury*, Madison himself argued that he, as part of the government and just like the Congress and the

Court, was a mere agent of the population and not the owners of power. Consequently, Madison concluded that the Court should have its powers decided by their actual owners, the citizens themselves.

Finally, the big question faced by all Constitutional courts is how to preserve the legitimacy of the Court. The essence of a system of separation of powers is that no branch is above the other and all balance the others. For Jefferson, effectively one of the parties in dispute in *Marbury* since it was presidential power in play and he had attempted to appoint the judge, the ultimate power of decision does not dwell in any of the three branches, but in the population itself, in the citizenry, which is required, through its vote, to demand accountability from the stakeholders in the political system. The fact that one individual is elected for the executive, many representatives for the Congress, and that both branches have a role in nominating (the President) and approving (the Senate) members of the Supreme Court, creates the essence of both legitimacy and balance.

“...the big question faced by all Constitutional courts is how to preserve the legitimacy of the Court.”

Coming back to Mexico's current situation, the Supreme Court has had several cases in which there has been a dilemma similar to *Marbury*, but the Court has not chosen to face the political challenge that the cases presented. According to the Constitution, the government acts

as an agent of society and the government's functions, powers, and limits are defined in terms of individual rights. That is, the Constitution limits government to acts that do not usurp the citizens' rights. In the traditional definition of its role, the Court would only apply or interpret what is written in the Constitution strictly. The alternative would be to develop a jurisprudence that would create rules; in other words, that is does not limit itself to interpret the Constitution in a technical way (and remain as an entity that represents the current interests of the Mexican State), but to create a new political and legislative reality founded on the substance of the Constitution.

That is, the Court could be prepared so that when a case that challenges the relationship between branches arrives, it can devote itself to the essence of the Constitutional text, ruling on the substance of the dispute. The latter

might involve specific details about the Presidential veto (in this or other matters) that are not explicit in the Constitution so as to define rules that are relevant to the matter but also helps the Court emerge as an arbiter that has established itself as the factor of equilibrium between the other two branches of government.

In a Constitutional democracy, the three branches of government (judicial, executive and legislative) are co-equal, but the judiciary has a specific function (though one that is not more important than the other two) which is to preserve the rule of law through the interpretation of the Constitution. From this perspective, the Court does not have, nor should it have, enough power to enforce its rulings because, if that were the case, the healthy tension that enables a balance between the three branches would not exist. As in the case of papal infallibility, the law does not emanate from the rulings and interpretations of the judges of the Constitution but from the population through the three branches of government. This is not a play on words, but an essential distinction: the messenger is the message.

The political tension around several controversial issues that have prevailed in the country in recent years has shown both the strengths and the weaknesses of the Mexican system of separation of powers. A glaring weakness is the anemic legitimacy of the Supreme Court. Although one of the most remarkable achievements of recent years has been that its judgments are accepted by the parties involved (there was no certainty that this would happen when the present Court was created in 1995), it has yet to take all the powers granted to it by the Constitution and the powers that could it could legitimately claim. It is this weakness that makes it seem normal when one of the parties in a dispute can have personal meetings (i.e., behind curtains) with the Chief Justice or other ministers rather than letting any interaction be held openly and with the presence of all parties involved. In addition, Mexico's case is an exception compared to other parts of the world because the hearings where the parties present their cases are private but discussions between ministers are public, a fact that creates perverse incentives for the functioning of the Court. Every other supreme court on Earth takes exactly the opposite approach: public hearings and private discussions.

The Supreme Court of Justice has to be independent and in order to function requires the legitimacy that only autonomy can provide. It must

be earned in three ways a) being independent and providing equal (and public) access to all parties within the official headquarters and not in private meetings or gatherings; b) asserting its independence and respectability through its own decisions; c) contributing to the political and institutional development of the country through rulings that relate to the other two branches of government. Whether it wants to be or not, the Court is in the spotlight and has only two choices: give in to pressure from any one of the parties in a dispute (with the consequences that this entails), or take action to help transform the country.

The problem for the Court is breaking the inertia of the old Presidential system which produced a lot of legislation without ever establishing the rule of law. In an environment of open electoral competition and alternation of parties in government, but yet still massive political fragility, the Court has the opportunity to build on the Constitution and not be strictly limited to its technical content, but doing it in a judicious way that will generate

legitimacy as its rulings are accepted by all stakeholders.

“Nowadays, the big pending issue is the institutionalization of power that is often an issue in cases reaching the Supreme Court. The Court has acquired respectability but is not perceived as the Constitutional Tribunal whose role is equal to those of the other two branches of government.”

The country has made great strides in the areas of political competition, competitive elections and coexistence among the branches of government even when different political parties control them. Although sometimes dysfunctional, this progress is relevant and can lead to the construction of the institutional structure of a

modern country. Nowadays, the big pending issue is the institutionalization of power that is often an issue in cases reaching the Supreme Court. The Court has acquired respectability but is not perceived as the Constitutional Tribunal whose role is equal to those of the other two branches of government. Its significance, but above all its critical function in the complex times the country is going through, is to become an independent and

autonomous institution that is considered a balancing factor between the other two branches of government. Although its decisions have generally been complied with, nothing has prevented the threats it often suffers, especially from the legislature. The country is eager for the birth of a new relationship between the citizenry and the State. The Court holds that possibility in its hands.





PART 4.

Elements for Redefining Power

Rules: the foundation of political order

“Democracies work best when the remit of politicians is reined in. The separation of the judiciary from the executive and legislative arms of government is a long-established principle. And in economic policy, too, politicians have begun to realise the value of limiting their own powers.”

Paul Johnson

Coexistence depends on the respect that everyone has for their neighbor. That respect, the essence of order in society, derives from the existence of rules --sometimes explicit, other times implicit-- which establish rights but also limit individual actions. The social order starts with this fundamental principle: the natural propensity of everyone is to advance their own interests regardless of the interests and desires of others and this inevitably leads to conflict. The rules adopted by a society are the way in which that society attempts to regulate the relationships or interactions between these interests to achieve a minimum standard of harmony and peace⁶.

From this perspective, the problem of power is solved when a society adopts clear rules that are known to all, and when there is --and this is the key-- both the willingness to fulfill them and the ability to enforce them. The moment a society achieves this combination is the one in which institutions have won over the people because, ultimately, a society of rules is also a society of institutions.

There are two ways to achieve coexistence and harmony. One is relying

on the idea that the intelligence and morality of the people will lead to the establishment of implicit agreements; the other one is building explicit rules that regulate such coexistence. In *Leviathan*, Hobbes raised the need for rules to prevent the violence that is, in his reading, the state of nature. The absence of rules leads to conflict while their presence can resolve conflicts as they arise. The key lies in the combination of rules and mechanisms to enforce them. These conditions are obvious for vehicular traffic and they should be equally evident in the political environment.

On one plane, rules in the political arena are very clear: majority rule, periodic elections, checks and balances, accountability etc. The problem is that these rules do not magically emerge but are the product of processes of political negotiation. When power is highly concentrated there is no incentive to adopt rules that will limit the power that created them.

“When power is highly concentrated there is no incentive to adopt rules that will limit the power that created them.”

Carlos Elizondo⁷ argues that “the President’s discretionary powers fall within the legal framework”, implying that the reality of power in Mexico is reflected in the nature of the rules that exist. Another way of saying this is that the problem is not the absence of rules but their nature: as long as the rules reflect and allow abuse and arbitrariness they are irrelevant.

In the economy, the main rules relate to property rights because they determine the level of certainty that an investor can rely upon to develop his activity. In the political sphere, the rules set the framework in which political forces operate and compete in a society but also the way in which citizens’ rights and those of their organizations are protected. In each of these levels, the existence of rules constitutes the core of what makes a society function which reflects the reality of the power structure that characterizes it.

The example of NAFTA is suggestive: its importance lies in the fact that it was established as an exception in the Mexican political structure. The Mexican government chose to explicitly and voluntarily limit its real and legal powers in order to confer certainty to investors; it did so because it knew that without the existence of rules which can limit the Presidential

power in an effective manner, investments would not materialize.

NAFTA illustrates two things: first, that there is an understanding of the dynamics of rules within Mexican society; the government has chosen not to adopt them in its everyday acts. In other words, the government --and the whole political world-- is not willing to self-contain itself beyond the matter of foreign investments. Second, if there were willingness, it would be possible to build the rule of law in the country. In short, the existence of the rule of law depends on the will of the rulers who now have Constitutionally-granted powers to act as they do.

In *The Social Contract*, Rousseau proposes a way to transition from man's "state of nature" to that of a "civil state", a progression which the author identifies with the construction of a society with rules that everyone knows, accepts, and complies with. Rousseau's argument is that the rules are not the product of chance but of

"This, in turn, cannot emerge unless the government itself limits its powers and sticks to strictly following the letter of the law: clear rules known to all in advance that are not subject to change derived from the rulers' power to modify them."

conscious acceptance by stakeholders and accepting them involves limiting individual liberty in exchange for all the benefits granted by life in society.

Mexico is faced with the issue of building the society of institutions envisioned by Plutarco Elias Calles almost a century ago. This can be achieved as the result of a social agreement like the one proposed by Rousseau centuries ago or it can be achieved if Mexican leaders agree to use their vast Constitutional powers to limit their own power going forward. Given the environment of conflict and violence --both physical and political-- that characterizes Mexico today, it is possible that the only feasible way to achieve a system of government based on rules is through the government's ceding of powers followed by a broad social agreement. In other words, there is no way to gain permanent legitimacy for the political system unless there is a social consensus to support it. This, in turn, cannot emerge unless the government itself limits its powers and sticks to strictly following the letter of the law: clear rules known to all in advance that are

not subject to change derived from the rulers' power to modify them. The sequence is key.

Rules and growth

Whoever has walked the streets of a European city knows that cafés are the lifeblood of social and community life. Cafés extend into sidewalks: they are a place where diners interact with passersby without the slightest conflict between them both. They occupy the sidewalk but not invade it, a perceptible reflection of a society in which there are clear rules that are respected by both private stakeholders as well as the authorities responsible for enforcing them. Although cafés and restaurants with tables on the sidewalk have proliferated in Mexico, the result has been quite different. The comparison is more important and revealing than what might seem at first sight.

In societies like Mexico, in which rules are given very little priority, daily coexistence requires alternative mechanisms that are able to make coexistence possible. For instance, in the case of vehicular traffic, the existence of speed bumps and a large number of traffic lights is significant: because there is a lack of knowledge and enforcement of the often changing rules, authorities use physical barriers to force drivers into behaving properly. Continuing with the European example, in societies where knowledge of the rules is an essential requirement for driving, there are fewer traffic lights and virtually no speed bumps: authorities use roundabouts as a mechanism of interaction between drivers who are heading in different directions at the same time. Behind the use of roundabouts there is a whole philosophy of community life that also reveals the nature of authority: it is expected that all drivers will know the rules and will adhere to them. There is a whole procedure in these roundabouts to enter, drive through, and exit. Only those who know (and obey) traffic rules can function within that scheme.

“Without clear and transparent rules, everything is subject to negotiation which, within the Mexican environment, involves bribes.”

Cafes and restaurants in the Condesa neighborhood or on Masaryk Avenue in Mexico live in an environment of changing rules, which always depend on the current will of local rulers and change frequently. There is no permanent code determining

what is and is not forbidden (and whose enforcement is equally strict for individuals, businesses, and authorities). Without clear and transparent rules, everything is subject to negotiation which, within the Mexican environment, involves bribes. When a business reaches an agreement (meaning, the local borough head or municipal president is paid off) the permit is equal to the time the aforementioned leader is in office which is why the restaurant will insist on exploiting every inch of space available on the street, no matter the cost. The behavior of both the authority and the restaurant is absolutely logical and rational: they both are exploiting the opportunity created by the “agreement” and both know it is for a limited time only. The arbitrary powers that the rules grant to local authorities allow such arrangements at the expense of anything, starting with pedestrians.

With these differences, it is clear that there are impediments for the growth of investments and, therefore, of the economy, which transcend the reforms that the government so eagerly promoted in the first half of its tenure. There are factors that inhibit investments because they make it costly and, above all, risky. A restaurant owner who does not have reasonable certainty about how the space that he or she would like to use will be governed will think twice before making his investment. The same is true for a mega-company that wants to invest in the energy sector or in a manufacturing plant for exports. It is no coincidence that those who invest are the ones who, thanks to NAFTA, have legal and patrimonial certainties, something from which virtually all Mexicans are excluded.

Mancur Olson, an American academic, explained this phenomenon: he found that when a company or consortium has a particular interest that is clearly defined can attain substantial perks compared to what millions of consumers who lack common goals could gain. Thus, a core of companies and unions can achieve tariffs or regulatory protections that will negatively affect the consumer because this ensemble is capable of effective and direct pressure. Following the example of the restaurant owner, that same group of companies can reach an agreement with the Ministry of Economy which, by benefitting them, will harm not only the general population but will also make the restaurant investment risky overall. Who would want to invest in an environment where the rules are set by an authority with an ever-changing mood (i.e., one that is corrupt)? This example is extended to sectors such as communications, agriculture, farming, and others. When

asking why the economy does not grow, the answer should be obvious.

“Today these powers remain but reality has changed: in an open and competitive environment what might have been virtuous now condemns the country to poverty and disillusionment.”

has changed: in an open and competitive environment what might have been virtuous now condemns the country to poverty and disillusionment. Nothing will change as illegality and absence of checks and balances are the norm.

Arbitrariness is possible because there are no checks and balances: in other words, it is an issue of power. As long as authorities can make decisions that affect lives and property without a process of review and there is not full transparency for all the relevant and interested parties about the powers of the respective authorities as well as of the judicial mechanisms at their disposal, the potential for arbitrariness is infinite. And those arbitrary powers are what allows and enables corruption. The fact that there are authorities with vast arbitrary powers is, ultimately, an issue of power.

The Mexican system of government was built on the principle that the authority should have great powers in deciding where and how the country is going to develop. That probably made sense and worked a hundred years ago after the devastation of the Revolution and in the context of an enclosed and protected economy. Today these powers remain but reality



What Mexico can learn from China

“History teaches by analogy, not identity.”

Henry Kissinger

Beyond its current problems, as well as the vast and very complex transition experienced by the Chinese economy today, China’s transformation from a poor and rural society into the fastest growing economy in the world for over three decades does not cease to impress. The revolution in wealth creation that Deng Xiaoping unleashed in China is unparalleled in modern world history. In just fifteen years, Deng triggered uncountable resources and forces which had been repressed by decades of Maoist orthodoxy thereby achieving an annual average growth rate of 9%. About two-hundred million Chinese have been lifted out of poverty while the rural population, which accounts for three quarters of the country’s total, saw its real income increase by a factor of three. What Deng did was not very different from what successive Mexican governments did in Mexico during approximately the same period. But the results could not be more different.

Similar to the situation in Mexico, when Deng took political control of China, there was an autarkic economy, a dominating bureaucracy, and a complete disregard for the market as a mechanism for resource allocation. Today in China there are countless state-owned companies (mostly owned by cities or municipalities rather than the central government), all involved in individual as well as joint investment, usually with foreign businessmen. No one knows how much profit these companies make, if any, but they are the main component of the country's fiscal deficit. Even so, for more than three decades, China has been the destination of most foreign investments worldwide. A vibrant private sector has emerged and grown from literally nothing. It is hard to imagine a more profound transformation, especially when acknowledging that the starting point was an autocratic country that fervently pursued mediocrity and poverty as mechanisms of political control in order to maintain stability rather than seeking stability while also generating wealth.

Although no description, analysis, or biography of Deng portrays him as an expert on the market economy or a believer in its instruments, the innovation he contributed to China's development was to allow the economy to flourish through the individual decisions of millions of people. He abandoned the premise that the central bureaucracy knew --and, subsequently, could decide-- what was good for each and every one of the hundreds of millions of Chinese and, thereby, implemented an impressive revolution.

At the core of this revolution is a very pragmatic principle that was crucial in Deng's economic success. For Mao's successor, the essence of development dwelled not in what the government did but in the framework it created for economic agents. Deng believed that the existence of specific and well-defined incentives, as well as pre-established responsibilities, was much more effective for generating economic development than any other government action or development plan.

Even so, in 1992 Deng showed that he understood that the government had a central role to play in economic development. When the conservative wing of the Communist Party tried to overturn the economic reforms after the Tiananmen massacre of 1989, Deng led the charge to accelerate the pace of economic growth as a way to deal with the country's problems by involving savers and investors. Exercising unprecedented leadership, he managed to

reactivate construction projects, worked to prod the stock markets, and made politicians and party officials see that economic development was an opportunity for their own success. The economy went back to growth in the blink of an eye, achieving average growth rates of more than twelve percent between 1992 and 1996. The combination of clear incentives, an active leadership and conditions of certainty for savers and investors not only enabled China to recover, it generated an unprecedented economic revitalization.

The irony of the Chinese economy --which shares many parallels with recent changes undertaken in Mexico-- is that while there have been many reforms, what remains to be reformed is still overwhelming. To begin with, the prevailing dogma remains that there is no connection between economic liberalization and growth and the surge of demands for political participation by the citizenship. The Chinese government sustains the notion that growth in the people's incomes, mobility of workers, television and changes in the lifestyle of the population brought by the economic transformation, have no political relevance or consequences. For Deng --as for recent Mexican governments-- economic reforms were meant as a mechanism to strengthen the traditional political system; their goal (and hope) was to maintain the political status quo despite the changes in the economy. That is, economic reform was seen as a means to support and strengthen the autocratic political system.

In the economic field, it is shocking how little China has reformed and how much these reforms have led to. China's financial and banking system is totally inadequate to meet the demand for credit. Parastatal companies continue to suffer losses and their leaders are not the least bit embarrassed when demanding aid, subsidies, and all kinds of perks. Millions of companies are stagnant and paralyzed because there is no suitable legislation to deal with bankruptcies which, would allow unsustainable businesses to close and to mobilize assets that could be extraordinarily productive in the hands of other entrepreneurs. The impressive thing is that all these overwhelming similarities with Mexico have not prevented the Chinese economy from growing, apparently without limits.

The main difference with Mexico does not appear to dwell in a virtuous economic management, as China's is clearly not any more virtuous than Mexico's. There does not seem to be an important difference in property

rights since the Chinese regulation seems to be, if anything, even more confused than in Mexico. Corruption of government officials and the

“The Chinese—and investors in China—know what to expect.”

private sector as well as entrepreneurs, nepotism, and the bureaucracy’s tendency to have a finger everywhere does not represent a significant difference between the two nations. In China there are also many renegades who would return to the idyllic world of the bureaucratic utopia.

As in Mexico, the economic reforms, incomplete and insufficient as they have been, have altered the political order, undermined the authority of the ruling party and decentralized political, economic and social life. In short, what has happened in China over the last two decades does not seem to be extraordinarily different from what has happened in Mexico. And yet, the per capita income in China has been rising spectacularly while Mexico’s remains stagnant.

Given the relative similarities in the process of reform, the explanation for the difference in results seems to lie in the certainty enjoyed by the Chinese. For two decades, the Chinese government has endeavored to maintain the credibility of its policies. While there have been ups and downs along the way and from time to time the need for an economic adjustment to lower inflation (another similarity), what has remained constant in China is the systematic search for an environment of certainty. This has taken place despite the fact that the Chinese have an even more secretive and controlled political system that is even less subject to outside scrutiny. Chinese politicking has not eroded the permanent search of certainty for economic agents, nor has it resulted in a change of the way the government acts. Although economic policy has changed to suit the circumstances, the rules of the game have remained unchanged. The Chinese—and investors in China—know what to expect; and they are assured that the government will stay the course of economic policy and that they will not have to spend hours and hours to understand a new tax regulation or ruling that will alter the essence of their activity. That certainty, the mixture of consistency in government action and clear leadership in the economic process, seem to be the critical differences with Mexico.



Power and rights

“The poor have sometimes objected to being governed badly, the rich have always objected to being governed at all.”

GK Chesterton

Mexico has been stuck in its ability to govern itself. The government has huge capabilities to exercise power but faces high levels of unpopularity as well as social and political mobilization of various kinds that have ended up paralyzing it. At the same time, the lack of reliable and permanent sources of legal certainty for the development of political and economic projects has become an inexorable obstacle to economic growth. Mexico has fallen into the worst of all worlds: a government that has vast real powers but no ability to exercise them because of social mobilization. The result is an ineffective political system that does not govern or enable economic development.

This fatal combination of circumstances is the product of a long history whose roots lie in the political control exercised by a very small group that held power for decades with minimal restrictions. The system’s reserve of credibility and legitimacy that emerged from that political base was

depleted over time because, although it was successful in generating a social transformation (the growth of a modern urban society), it also generated huge and growing costs in the form of economic crises, abuse of social rights, uncontrollable violence, and public insecurity.

“The lack of counterweights to power makes the existence of the rule of law, whose essence lies in the certainty for the entire population that their rights will be protected, impossible.”

This issue has been acknowledged for decades and is the source of the agreements that gradually led to the implementation of several electoral reforms and the result of which has been the alternation of parties in power and open electoral competition. However, none of those reforms managed to alter the power structure or the culture that supports it. Paradoxically, it was the return of the most ancient

and obstinate members of PRI that generated the crisis of legitimacy that characterize the country today.

The true measure of power resides in the existence of restrictions and counterweights to the exercise of that power. A democratic regime exists to the extent that those in power are unable to discriminate against minorities or to deny effective equality of opportunity and access to the law for the whole of the population. In the absence of restrictions on power, the political regime is not an integral democracy even if it includes political rights, such as regular elections, because it involves a structure of systematic abuse of the rights of the citizenry. The lack of counterweights to power makes the existence of the rule of law, whose essence lies in the certainty for the entire population that their rights will be protected, impossible.

There are various kinds of restrictions on the exercise of power. In some cases it is legal statutes, in others it is administrative rulings. Some countries have very advanced Constitutional systems while others have consensual mechanisms that work and are enforced autonomously and automatically. The core of the matter is that counterweights are means by which the exercise of power reaches a balance but does not remove the government's capacity for action; they are, ideally, mechanisms that limit the abuse of

power but do not prevent a government from efficiently and effectively operating using those mechanisms.

The political literature has studied the phenomenon of democracies failing to become democratic beyond the electoral sphere. Fareed Zakaria coined the term “illiberal democracy” to characterize societies that organize elections regularly but that routinely violate the rights of the population. In a recent study, Mukand and Rodrik⁸ argue that there are three sets of rights --property, political, and civil--

and that the dynamics of the progress of each are quite different. Property rights protect the owners of capital; political rights guarantee free and fair elections; and civil rights ensure equality before the law. Their argument is that, except for countries where the industrialization process led to social mobilization which in turn

“Property rights protect the owners of capital; political rights guarantee free and fair elections; and civil rights ensure equality before the law.”

provided the masses with the power to assert their civil rights, most recent democracies never consolidated them. In other words, few societies have all three types of rights.

Although the evolution of Mexico does not really fit into the scheme presented by these authors, the problem is real: an effective political system requires the existence and protection of the aforementioned three types of rights. Ironically, one of the characteristics of Mexico is that, as opposed to Mukand and Rodrik, the protection of property rights is much stronger for foreign investors than for domestic ones. That is to say, the historic strength of the revolutionary regime was so vast that it had the ability to impose itself over rights that the author considers basic and self-evident. That is why the great challenge of Mexico lies in the construction of a political-legal system that enshrines the rights of society at various levels and provides not only certainty for the population but also mechanisms for those in power to actually govern.

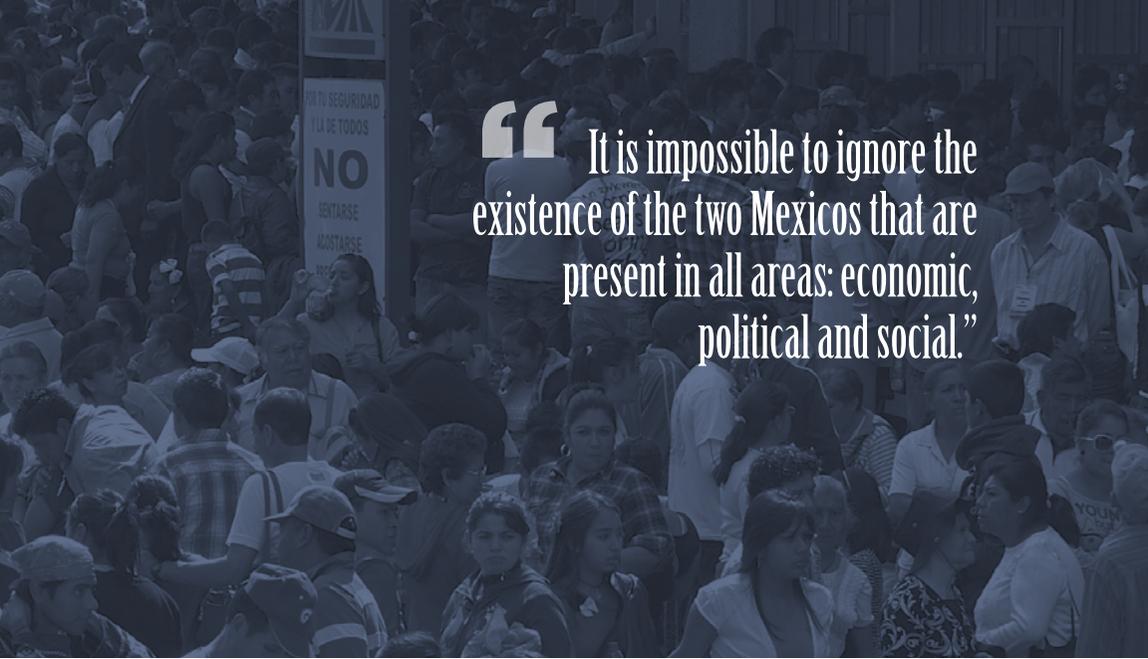


The dilemma: what to change and how

“To get power you need to display absolute pettiness. To exercise power, you need to show true greatness.”

Napoleon

In the novel *Darkness at Noon* by Arthur Koestler, Ivanov, a bureaucrat loyal to the orders of the Revolution’s No. 1, interrogates Rubashov, one of the old Revolution leaders arrested for expressing doubts about the fate of his country after the triumph of the Revolution. A disillusioned Rubashov rebukes Ivanov with a lapidary statement: “We made history, you only play politics.” In his view, Rubashov fought to change history and improve the situation of the people. But for him, the party and the State ceased to represent the true interests of human progress after the Revolution’s triumph. The rulers, led with an iron fist by No. 1, are keener on preserving power than promoting the majority’s wellbeing. The political reality overshadowed the historical idealism. To be like Ivanov or Rubashov? That is the eternal dilemma for those who rule.



“ It is impossible to ignore the existence of the two Mexicos that are present in all areas: economic, political and social.”

Mexico faces the dilemma on how to solve its chronic inability to govern itself. Although the dominant political environment has never “officially” seen the problem as one related to power, the country’s contradictions and limitations in recent decades are self-evident. The old political-economic model collapsed in the sixties because it lost viability, but a new project with the same degree of consensus was never consolidated. From the seventies onwards, the country has experienced a permanent division between two polarizing concepts of development which has never been resolved. While the economy has prospered, a huge part of the population remains attached to the old agricultural and industrial model which ceased yielding positive results long ago. The political system, although reformed, has not improved the country’s ability to govern itself. In short, the age-old dilemma is of the essence.

It is impossible to ignore the existence of the two Mexicos that are present in all areas: economic, political and social. In addition, each one reinforces the other: the absence of an effective system of government prevents the integration of the two economic components (and to assume the costs associated with it); the persistence of the old rural and industrial economy prevents breaking the vicious cycles that encourage the permanence of poverty. Deep down, the disorders of power explain the ills of Mexico’s reality.

The modern Mexico demands predictability, anathema for a political system based on the ability to skew the processes and decisions without being held accountable for its endeavors. The modern Mexico, the country that produces more wealth and employment and whose economic benefits allow the survival of the old Mexico, needs new rules as well as a functional

“The modern Mexico demands predictability, anathema for a political system based on the ability to skew the processes and decisions without being held accountable for its endeavors.”

and effective government. On the other hand, the old Mexico requires wide margins of discretion to favor certain groups and interests, key components of the old PRI coalition that emerged, in its beginnings, from the Revolution. The former demands institutions guaranteeing predictable processes that are known in advance; the latter is about inherently discriminatory decisions that are inconsistent with the transparency that has now become a mantra in

Mexican society as well as the accountability that is essential in a society with strong institutions.

To the extent that the guiding principle of the government is not to affect the key interests that support it and are part of that old coalition, reforming the country becomes impossible. The oil sector is a clear example because it reflects the internecine struggle between the two models of economy and power: regardless of the industrial organization that would be desirable for the oil sector in the future, there is no way to build a competitive industry unless the company that is at the core of the sector, PEMEX is also reformed. Ineluctably, reforming PEMEX means affecting groups and interests that, for decades, have been one of the main sources of power and money for the ruling coalition. At PEMEX it is easy to appreciate the inherent contradiction of a reform project that pretends to reach two opposing goals simultaneously: preserving the ruling coalition while modernizing the organization.

If one accepts the diagnosis provided by this book --that the problem of the country is, at its heart, a problem of power- the question is what can be done to solve it and, if so, how can those be made to happen. In this book I have argued that the Mexican political system stalled in the twentieth

century and has been unable to adapt to a changing internal and external reality. Implicitly, the question I asked myself over the first part of this text was: why have other countries been able to transform their systems so that their system of government can respond to the demands of modern society? In contrast to Mexico, many societies have had an uncanny ability to reform and adapt their governance structures to respond to a changing reality. Beyond historical or even anthropological elements that could shed light on the causes of these differences, what matters for the purpose of this exercise is how Mexico might respond now: what would it take to build new structures or adapt existing ones so that the ability of government matches the needs and demands of a complex country in a competitive world where information is ubiquitous.

Spain, South Africa, and some nations in the southern hemisphere illustrate different forms of political transition, some more successful than others, but all relevant as part of a comparison. These cases show critical experiences (dictatorships, authoritarian regimes, civil wars, isolation) which were the starting point for building a new political system. In virtually all these cases, democracy and the rule of law ended up being the means for decision-making and served as retaining walls against the inevitable tendency of various sectors in their societies to attempt to rebuild an authoritarian past.

In my earlier book *A Mexican Utopia: The Rule of Law is Possible*, I argued that there are three ways to achieve a change in the system of government. One is exceptional leadership that breaks through the inertia; the second is a major crisis (economic and/or political) that forces the reorganization of the governmental system; and the third is an organized society that imposes itself and forces the system of power to launch a process of transformation. The cases mentioned in the previous paragraph serve as an example of moments of rupture that allow a transformation but there are countless similar cases that did not end well. Argentina, to cite an obvious case, has suffered several military dictatorships and never achieved the structural transformation that characterized Chile. In the same way, judging from the literature that emerged in the decades after the successful Spanish transition subsequent to Franco's death, there were enormous forces pressing for a very different process.

The essential point is that a crisis is not something to be desired and is no guarantee of a successful transition. The same can be said of an enlightened

leadership that might prove to be as successful as that of Mandela in South Africa, or as failed as that of ambitious leaders like Perón, Idi Amin, Echeverría, Chávez and many others. Meanwhile, societies organize themselves or do not organize at all; there is no way to make them organize, which, in any case, still requires leadership.

Thus, the relevant question is, given its characteristics, how can Mexico be transformed? Conceptually, there are two forms: radical, rapid and critical processes vs. an incremental process that gradually establishes new institutional structures. There are no other ways.

The virtue of critical processes is that they open opportunities for transformation that are not conceivable in an incremental way: when inventing a new reality, it is easy to imagine, as if it were the blueprints for a new house, perfectly articulated institutions, rules of the game that are clean and tidy, and legislation, starting with a new Constitution, which is built upon the criteria of political and economic efficiency. A few nations have managed to create such a reality, but they are the exception to the rule. In recent decades, South Africa, Taiwan, Chile, South Korea, and Spain built something resembling the description above. The United States is an example of a country created after long and arduous discussions on how it should best be governed. Of course, one thing is the foundation of a new nation and another is the social forces and traditions that, over time, give shape to everyday life. South Africa has a great Constitution but its political situation has deteriorated to the extent that the group in power has made its influence felt, to the detriment of the constitution itself; Spain never broke free from the union structures and their effects; the United States is characterized by paralyzed political decision processes. In short, there is no Nirvana.

The processes of incremental change are those that occur as a result of daily interaction between the various components of society and its structures of political representation. Every negotiation, every discussion, every judgment of the Court and every protest or demonstration of any kind, will add to the process of institution building and change in society. These processes can be accelerated or biased in different ways according to both the existence of effective leadership as well as the pressure from various groups and individuals. In any case, all societies, including those that built foundational projects such as the aforementioned, end up experiencing

incremental processes, an inherent characteristic of human nature. With time, all countries modify their laws, adopting new ways to solve problems and reform their structures: all of which are the product of negotiation and political interaction.

The proposal of this book, which is explained in the remaining chapters, is purely incremental. The country needs fundamental changes in the way that it governs itself, but it also requires institutions and decisions that confer certainty and predictability to its decision-making. The former requires reforms that, in essence, involve limiting the arbitrary power which characterizes the country today; the latter involves a systematic development of institutional spaces dedicated to creating certainty but without keeping it from making the decisions the country requires. This balance cannot be achieved in a crisis; it will always be the product of political and social interaction.

In addition to the above, it is important to acknowledge that the Mexican political system is already decentralized. As much as the administration of President Peña Nieto has sought to concentrate power again, the fact is that there are a number of factors beyond its control. Consequently, the only way to build a system of government that matches the current circumstances lies in the incremental building of institutions that will strengthen and enable effective checks and balances.

The country requires a consistent and predictable process of institutionalization, that is to say, the product of a constant and gradual transformation, which can be accelerated by judicial rulings or large and ambitious legislative reforms at various times. The purpose of this book is to move towards the equivalent of “padlocks”, that is, mechanisms that force the adoption of clear rules that ensure predictability.



Due process as a straitjacket

“Power, in whatever hands, is rarely guilty of too strict limitations on itself.”

Edmund Burke

As should now be clear, the thesis of this book is that Mexico faces a continuing political impasse due to a lack of legal certainty and reliable procedures for the conduct of national affairs. Several groups in society --from the humblest peasant to the loftiest entrepreneurs, from civil organizations to trade unions, and from political parties to public and private institutions of the most diverse types-- demand certainty and sources of trust, things that the current system of government has been unable to provide. The mechanisms that worked before are no longer effective and the pretense that one person can, with a different attitude, alter the destiny of the country has proven to be fallacious. The current government (as well as several potential candidates contending for the Presidency) has claimed that its personality, leadership, and management skills can determine the fate of the country, only to find that people are not willing to follow it and, more

“ In addition to the political failure that this represents, the inability to create lasting sources of certainty has resulted in low investment rates, low Presidential approval rates, and the population’s unending search for a Messianic alternative.”

importantly, that the government no longer has adequate mechanisms to control the country it purports to govern. What was once possible is now not feasible.

In addition to the political failure that this represents, the inability to create lasting sources of certainty has resulted in low investment rates, low Presidential approval rates, and the population’s unending search for a Messianic alternative. The problem, however, is not of individuals but procedures and institutions. The country cannot depend on the changing will of its rulers and the current paralysis is an example of this. What Mexico needs is the certainty of a legal regime that is respected and enforced.

The Mexico of a few decades ago allowed and favored an almost unipersonal exercise of power. Today both national and international circumstances make that approach much harder, if not impossible, and perhaps that is where the paradox of a government that successfully advances an agenda but fails to achieve a corresponding popularity lies. A central feature of the country today --and of the global economy-- is the decentralization of power and production. Central controls are no longer functional and in many cases they are not possible at all. What the country needs is a clear direction for development which, paradoxically, will mean enabling an increase in the number of sectoral and functional leaderships, each of which will have their respective limits, just as the President himself has.

For the country to break the impasse, it will be necessary to move towards the rule of law, which, in the short term, will involve establishing a set of rules that are known to all citizens and that would force everyone, starting with the government, to abide by them. If preserved and fulfilled, these rules of procedure could become the foundation for full rule of law in the future.

At first, a way to achieve the rapid legitimization of a project like this would be to adopt a principle of law from developed countries which (because it is taken from developed countries) could presumably gain wide acceptance. The “due process of law,” as the concept is known, implies a straitjacket that would enable its reliability.

In its most basic definition, the “due process of law” is a legal requirement that the State respect the rights of individuals. Due process balances the power of the law and protects the individual from unfair application of it. When a government affects a person without precisely following the procedures established by law it is due process that is being violated and undermining the rule of law.

The concept of due process is derived from the Magna Carta, the 1215 document in which the King of England promised to abide by the law, becoming the oldest precedent that is still relevant today in terms of balance of power and respect for citizens’ rights. King John of England pledged that “No free man shall be seized or imprisoned, or stripped of his rights and possessions, or outlawed or exiled ... nor will we proceed with force against him ... except by the lawful judgment of his equals or by the law of the land.”⁹ With this, the Magna Carta established the rule of law in England, not only forcing the monarchy to obey the law but limiting the King in the way that the law could be amended.

In the U.S. Constitution the concept of due process is a safeguard to prevent the government from acting outside the law and arbitrarily depriving individuals of their life, liberty or property. The clause provides four sources of protection: due process in civil and criminal proceedings; substantive due process (not only respect for the procedures but also for the spirit of the law); prohibition of laws with vague content; method of implementation against the resulting infringement of individual rights. From this perspective, due process involves the protection of citizens’ rights regardless of which party enjoys a legislative majority or the interests of the ruling group.

Legality requires treatment in agreement with general principles and in accordance with those principles (i.e., both its content and substance).

Although it might appear to be a conceptual and theoretical issue, it is in fact a very concrete element that very often ends up determining the legality of an act. In the case of the Frenchwoman accused of kidnapping, Florence Cassez, her release was the result of an acknowledgement that her rights had been violated because she had been denied due process, a reason for release that Mexico has very seldom, if ever, upheld. That is to say that this protection, the most important one in legal terms, forces the ruler to strictly adhere to a process so that all stakeholders (defendants, investors and victims) are confident that their rights will be respected.

What differentiates a government from a band of criminals? Both follow protocols and rituals, but only a government committed to the law follows procedures that are reasonable and generally known in advance. The law ends up being a set of procedures that the government and its constituent parts are required to follow for the protection of citizens.

What does this have to do with Mexico today? The great political challenge of Mexico today lies in a serious combination of two circumstances: firstly, a system of government that is unable to govern (at all levels and regardless of the people that comprise it) and a skeptical society that no longer recognizes the government as legitimate or accepts its decisions. This combination forces us to rethink the very concept of the system of government and to seek a solution that can overcome it quickly. Of course, there are no magic or instant solutions, but the notion that the country has a fate that cannot be altered by society, the government or, ideally both, is unacceptable.

Adopting a set of rules of procedure would be the beginning of a revival project that would not only have the power to create a basis for legal certainty and trust within the population but also limit current and future rulers ability to act arbitrarily actions of. Instead of fearing future Presidents, the country should build institutional structures that prevent arbitrary acts regardless of who the person is. Due process of law would be a good place to start.

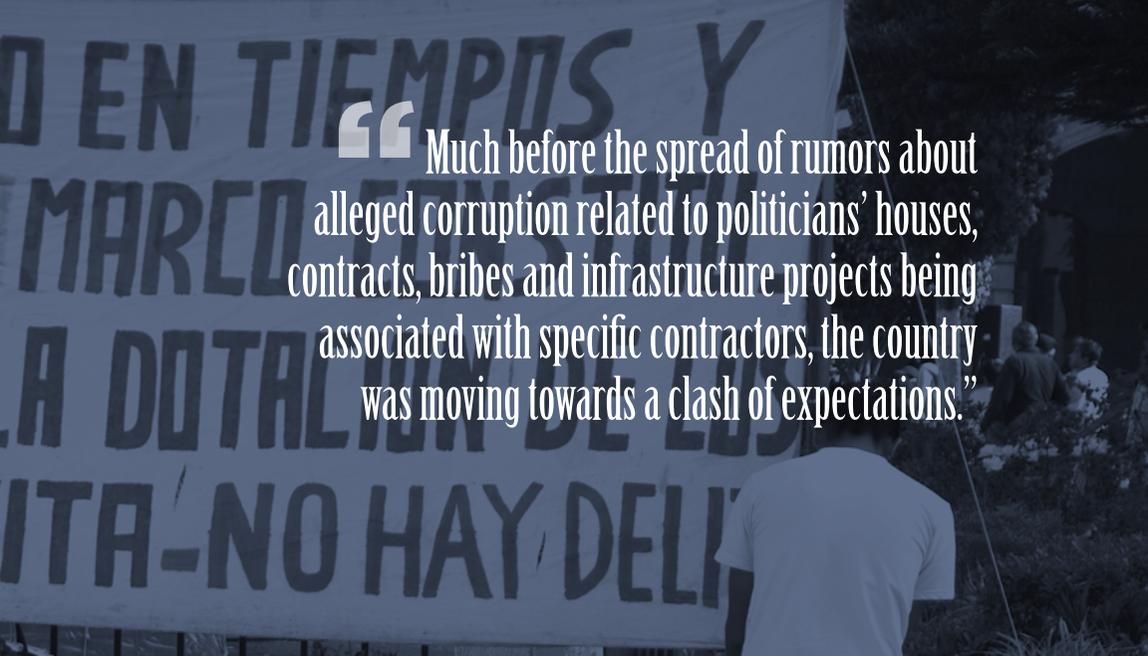


What is next

“It is instructive to observe how Luther moved from tolerance to dogma as his power and certainty grew...it was difficult for a man of Luther’s forceful and positive character to advocate tolerance after his position had been made relatively secure. A man who was sure that he had God’s Word could not tolerate its contradiction.”

Will Durant

Being “more fathers of our future than sons of our past,” argued Unamuno, the wise Spanish philosopher, while facing the fascist hordes at the time of the Spanish Civil War. The great issue of Mexican society today is how to revive the national political and economic life - building the future in Unamuno’s sense - under the light of the paralysis that the country lives in and the irrationality - sometimes similar to that of a civil war - that seems to dominate the current collective negative mood.



“ Much before the spread of rumors about alleged corruption related to politicians’ houses, contracts, bribes and infrastructure projects being associated with specific contractors, the country was moving towards a clash of expectations.”

The only thing that cannot be disputed is that the unease is widespread and crosses through social classes and regional boundaries. The cause of this phenomenon is more complex, but I have no doubt that its core is a huge disappointment with the government, politics and politicians. Even though corruption has become the explanation that many give for their own discouragement, my impression is that there is more than the factor of corruption in the collective mind, since it is neither new nor unique in the country.

Much before the spread of rumors about alleged corruption related to politicians’ houses, contracts, bribes and infrastructure projects being associated with specific contractors, the country was moving towards a clash of expectations. The government had begun its term with drum rolls, with nothing stopping its course. Long before its inauguration, it had convinced media outlets with huge international influence about its transformation project, promising things that were never realistic but, however, served for self-promotion purposes. The onslaught was multifaceted and generated an immediate mixture of anticipation, fear and condemnation. For some, the promise of a reform project satisfied the hope that, finally, the country would take a step forward. For others, the control of the media, with forced dismissal of journalists and censorship implied in this, announced the return to the worst times of national life. The changes that took place both at the Constitutional level as well as on the fiscal side, led to a broad repudiation in other parts of society. But the government did not relent in its course.

For me it was evident that there was a fundamental problem in the government's project because there seemed to be no inherent connection between the ambition inherent in the massive reforms being proposed and the political actions required to implement them and bring them into fruition. It was clear that within the government it was assumed that, once

“Politics is an activity that seeks to resolve conflicts, channel differences, and reconcile dissonant positions. In a democracy, politics have the additional function of developing coalitions, convincing people and cultivating popular support.”

approved, the reforms would be consolidated by themselves. In this way, the diagnosis seemed to be that the real obstacle for the reforms was not the reality of each activity or sector, but Congress: therefore, with the suppression of the Congress (through the Pact for Mexico), the obstacle was removed. No sooner said than done: supported by the Pact, the reforms were sent to Congress where they were approved expeditiously. The problem is that

the reality did not change, and cannot change unless the reforms are actually implemented, which inevitably implies affecting deeply ingrained vested interests, many of them essential to the political coalition that supports the President.

Thus, the clash was inevitable and obvious. What was surprising to me was the inability of the President to respond and adjust to a changed environment. After all he had shown extraordinary negotiating skills in his political life and a cunning strategy that successfully led to his Presidential candidacy. How, in this context, can the paralysis be explained? Time has led me to understand it better.

For many, politics are dirty and corrupt, but there is no society in the world and in history that can survive without politicians, because there are always competing interests, conflicting goals and numerous sources of dispute. Politics is an activity that seeks to resolve conflicts, channel differences, and reconcile dissonant positions. In a democracy, politics have the additional function of developing coalitions, convincing people and cultivating popular support. In other words, democracy requires not only the negotiation between interests, but also the convincing of society and each of its components.

In the eighties, Mexico experienced the beginning of a process of transition in the nature of its politics: from politics concentrated in the palace struggles of the PRI tradition towards a political activity aimed at winning the support of the people and the productive sectors, public opinion and the various social interests. Thus, Mexico began to experience more open politics, incipiently democratic. The process was not smooth, but it became unstoppable, and all politicians began to learn how to manage in both worlds, some with stunning success.

The current government, as if it had come from Mars, tried to return the country to the era of PRI's primitivism of the fifties, assuming that the participation of the population and its various parts in the political arena had been granted as a concession by the government rather than a new political reality. It is in this context, that the paralysis and inability of the government to adapt to the 21st century can be explained. Thereby, the overarching frustration of these days is not the product of chance, but of a very Mexican mixture: a government that does not understand that the world changed over the past five decades and the excessive weight of the government in society given its capacity to impose itself due to the arbitrary powers that it enjoys. This is a fatal combination because it prevents the development of a system of government that matches the needs of the 21st century, and because it enables and encourages corruption.

The big question now is whether, on one hand, society has already settled in its mood and, on the other hand, whether the government can come out of its morass and retake its thrust to change. In an open economy, the government has to explain, convince and add up, because it is the only possibility to advance its projects and goals. The opportunities are so great that it would be unfortunate if they went overboard due to the government's own stubbornness.



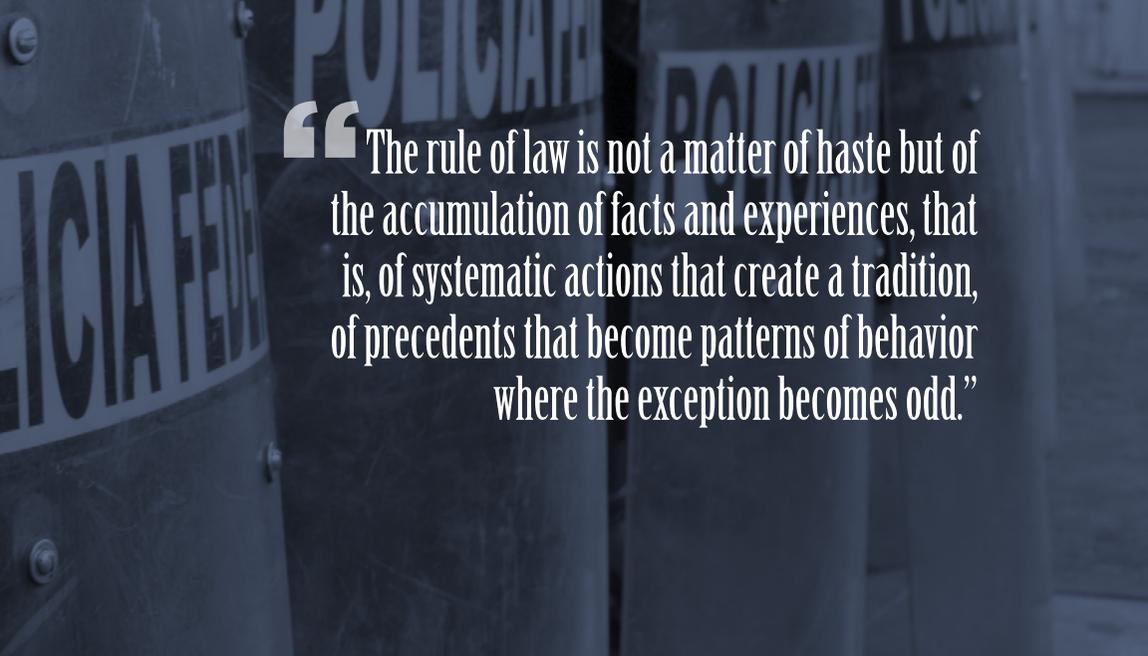
Is it possible at all?

“All Power corrupts but some must govern”

John le Carré

There are no magical solutions for the transformation of a country or for the building of the institutional structures that make it possible. The rule of law is not born out of thin air and is not anchored in the will of the citizenry or by a government that becomes convinced of its importance. The rule of law is not an absolute that exists or does not exist. As discussed above, in Mexico spaces of legality coexist with others of absolute impunity. Progress is made on some grounds while there is retreat in others. However, what is important, what might be changed, is the pattern: instead of addressing on a case-by-case basis, we must find a way to make it systematic: a formula that allows for the systematic accumulation of progress that gradually becomes ubiquitous.

The big question is how to accomplish this. The rule of law cannot result from the will of one person because this approach itself entails a



“The rule of law is not a matter of haste but of the accumulation of facts and experiences, that is, of systematic actions that create a tradition, of precedents that become patterns of behavior where the exception becomes odd.”

contradiction. However, a President willing to advance the process could have a much greater impact on the outcome than an individual citizen. The momentum that a President could bestow upon a process of institution building would align effort and political force; nevertheless, this hardly seems like a viable option today. When cases of corruption appeared in late 2014 and early 2015, President Peña Nieto was in a unique position to lead a process of this kind, since the process would require an acknowledgement of his own previous actions. However, as time goes on, such a possibility is becoming more and more remote, improbable and, above all, not very believable.

The rule of law is not a matter of haste but of the accumulation of facts and experiences, that is, of systematic actions that create a tradition, of precedents that become patterns of behavior where the exception becomes odd. That is what Mexico must aspire to. The issue is not one of major reforms but of a better system of government which involves organization and consistent actions that create predictability. To the extent that governments across the country begin to comply with their own rules, regulations, and laws, and, above all, as civil society and the civil organizations compel them to, the addition of many small actions can end up building the framework for the rule of law.

This final chapter presents a path that could be followed to build an institutional solution conducive to the eventual consolidation of the rule of law and, within it, of the due process of law. I start by discussing the kind of government that would have to emerge as a *sine qua non* condition, followed by a few examples that are suggestive of what this would mean. The chapter concludes with the key issue: the challenge of Mexico resides in the fact that authorities --municipal, state and federal-- must earn the respect of the citizenry through their daily actions. It is the small actions that set the precedents and that is why they are more important, than the big reforms that rarely come to fruition. It is authority that must earn its legitimacy and not the other way around.

Governing

The first major challenge for Mexico is to actually be governed. It is simple to say but it is the country's biggest shortcoming. Mexico has a government system that was built in another time and under different circumstances. It was functional and achieved full legitimacy for many decades. But what is required now is something qualitatively different: a government of high quality. Perhaps the relevant question is: "What does high quality mean?"

Governance is a term often used to describe the ability of a government to deal with the challenges it faces. According to Fukuyama¹⁰ governance depends on two factors: high state capacity and a high degree of bureaucratic autonomy. The first factor describes the government's ability to collect taxes and distribute them efficiently, effectively, and fairly in the form of physical infrastructure, social services, and other public goods. The second

“...governance depends on two factors: high state capacity and a high degree of bureaucratic autonomy.”

element describes the capacity of a country's administrative institutions to establish long-term objectives and operate without excessive political interference. From the perspective of this author, bureaucratic autonomy without corresponding high

state capacity carries the seeds of a weak regime and endless opportunities to foster kleptocracy and a world of corruption. Meanwhile, a high state capacity without bureaucratic autonomy leads to political control of

administrative and technical decision-making, making it very difficult to protect individual rights and property.

Fukuyama's point is that a country can be governed effectively and professionally even without strong democratic institutions, provided that there are these two components: a state of high capacity and a high degree of bureaucratic autonomy. Any observer of the history of post-Revolution Mexico could conclude that the country has never had autonomous bureaucratic entities and that the State had great strength and capacity for action for decades throughout the twentieth century, but that that capacity was eroded until it reached its current lack of efficacy. But the conceptual framework presented by this author is useful to set the parameters of the challenge that Mexico is facing.

Everyday life

If one looks at the evolution of daily life in Mexico, there are endless opportunities to observe the absence of government; even in the most basic things, the inability or unwillingness of the various authorities to fulfill their most basic obligations is shocking. It is reasonable to ask if this is not due to laziness, fear, lack of means, or political guidance, but the fact is that there are a number of circumstances in which pressure groups force the government to do their bidding, powerful unions get excessive privileges paid for by taxpayers, teachers do not attend classes, cars double park, and so on. In some cases, inaction may reflect a decision not to confront demonstrators, as violent as they may be, or take the easy way out rather than to solve a given problem. In other cases, there is no doubt that there is a fear of action: when a policeman is trying to stop a robbery, for example, he is obviously afraid not only of losing his life, but also of the fact that the malefactor can press charges against him afterwards for misuse of force or even murder. Whatever the causes, authorities from the most modest town to the Federal government are distinguished more by their not doing their job than by their effectiveness.

The case of the CNTE, the National Coordinator of Education Workers (the dissident teachers' union), is suggestive. For years, it blackmailed the government of Oaxaca as well as the federal one. In an attempt to appease the union, the union was allowed to control the state Secretariat of Education, which provided them with funds, authority, and an extraordinary

conflict of interest. Afterwards, they used a variety of means to extort money from the federal treasury, forcing the government to create exceptions to the law in their favor. In 2015, the state and federal governments organized themselves to take control of the local Secretary of Education away from them, which was really nothing more than applying the law. And nothing happened. Absolutely nothing. Decades of extortion had made the government afraid of changing anything, or acting on the issue, or even understanding what its responsibility was. But once the law was enforced the CNTE deflated. All that was required was for the government to assert its authority.

As these lines were being written, the country emerged unscathed from the hurricane Patricia which hit the western side of the Mexican landmass. The government was prepared, organized rescue workers, and acted diligently. I wonder, “Why not act with exactly the same clarity of vision in everyday law enforcement?” A country does not live on hurricanes or exceptional arrests with high media value; a country is built on the daily actions of an effective bureaucracy and a government that separates their political objectives from their responsibility to govern. Is there a genetic inability to achieve this?

Since 1968, the image of hundreds of people killed in Tlatelolco has marked the country’s political life. But the lesson that was derived from that experience was wrong. After those events, the government chose to never

“Since 1968, the image of hundreds of people killed in Tlatelolco has marked the country’s political life. But the lesson that was derived from that experience was wrong.”

apply any law; the implicit rationale was that it is better to have troublemakers around than to pay the consequences that come from the brutality of a poorly trained police force. But the result was much wider: not only were demonstrations no longer repressed, something

desirable, but the government also folded its hands and gradually disappeared. What was required, and still is, is a well-trained professional police force to keep order and that ensures that it respects the rights of those that protest as well as those who move around the city. the actual deficit began in 1968 when there was not an understanding that the political system had reached

its limits and that there was a need to develop a high capacity State in conjunction with a professional and autonomous bureaucracy.

The current issues for the Mexican State --from the federal government to municipal authorities-- are many and demand solutions that, by necessity, must consist of a conscious and systematic buildup of capacity of action and development of legitimacy. This is nothing other than using small things to develop bigger things (but not the other way around).

The corruption case is illustrative. There is a belief in Mexico today that corruption dominates everything and impunity is absolute. Although there have been legislative steps to try to deal with this problem nothing will change until there is evidence that authorities actually do something with those who participate in an act of corruption. There have been major reforms but small actions that will set precedents are still missing. Instead of ignoring the case of the houses, to cite an obvious one, and probably assuming that the issue would disappear from the media, it would have been better to turn it into an example and a precedent: for example, establishing strict rules for similar cases in the future. More than major changes that rarely materialize, building the rule of law requires systematic action on the things that make a difference in everyday life.

Mexico City has just adopted a new transit regulation code that purports to severely punish drivers who commit any infraction. That is certainly a good start, but it will only work to the extent that the authorities do the "little things" that will earn them credibility. The alternative, as history can attest, is that it becomes nothing more than a new and renewed tool for corruption in the hands of the police's kleptocracy. A good example is the public-service vans and minibuses, but also the bicycles which obstruct streets, double park, and hinder the normal traffic flow. The same is true of informal businesses that sell stolen goods and other pirated products. Unless authorities act diligently and with clarity of mind in these "small" examples, it is impossible for it to gain credibility. The key resides the authorities' earning legitimacy, that is to say, citizens' beginning to appreciate the government's role in fact after fact.

There are no magic solutions to the problems of Mexico; but, there is a lot that governments can do to radically change reality. The government (from the local to the federal levels) has abdicated its responsibility in all areas of national life. It not only fails to fulfill its most basic responsibility but

actually deepens and accentuates the problems and inequalities.

Poor public services generate private options that solve the general problem but not for everyone. For example, the postal service is terrible, although it is the one that serves the vast majority of the population; insecurity disproportionately affects those that are less well off because they have no alternative. The crucial point is to start with small deeds to build bigger things.

The big challenge for Mexico is to build a government capable of governing and that means good public services, security for citizens, efficiency in decision making, and good infrastructure --from a pothole in the road to the most spectacular bridge. What Mexico has today is a system of government that works for itself and not for the public or for the country's progress. That is the essence of the problem: when the government withdrew in 1968 it forgot that its role is essential and that it must be, in the words of Fukuyama, of high capacity, effectiveness, and efficiency. Such a government does not exist in Mexico today.

The reputation of the government is well earned and that is why the government must recover its credibility. That does not require major reforms but continuous, conscious, and clear work in fulfilling its daily duties. Governments need to enforce traffic regulations and pave the streets while supervising their traffic coordinators and police officers so that they do not

“For its part, society has to demand that the State fulfill its obligations and monitor its actions.”

rob the population. As progress occurs in these matters, authorities will start to recover their lost credibility. Eventually, they could earn full legitimacy.

For its part, society has to demand that the State fulfill its obligations and monitor its actions. That is the new balance that Mexico must achieve: a government that sees the citizen as its *raison d'être* and a citizenry that sees in the professionalism and effectiveness of the government's actions the fulfillment of that government's responsibilities.

How to get out of this mess?

What is evident in these times is that structural changes are required and not just media responses which only postpone problems since they are not

addressed and often just makes them bigger. The issue is not one of discourse but of institutional construction.

There are several ways to approach the institutional problem but what matters is the definition of the problem. What Mexican society requires is clear rules that are adhered to, that everybody knows and complies with, and that do not change from one government to another. That is to say, it requires the rule of law.

Where to start? There are several ways to strengthen the rule of law. The point is not to bring back an endless collection of codes and laws that nobody cares about because they can always be modified by the current President. The point is for a set of rules that do not change and are reliable to become the basis of a political transformation. All these codes may be used or modified later but they will not serve (or do not serve today) the purpose of generating credibility, legitimacy, certainty, and confidence unless there is a credible foundation of rules.

In these circumstances, the question is how to implement these basic rules. One way, the quickest, would be Presidential leadership that can convince people of the rules' significance and enforce compliance with the rules. President Peña has had this possibility in his hands for a long time but, as time passes and his credibility wears out, the opportunity is fading away. There is an increasing risk that instead of implementing the core of the rule of law the current reality will lead to an era of leaders prone to abuse, dictatorial practices, and imposition in place of social agreement. Time in these matters does make a difference.

One way to start, as proposed in this text, is building what in law is called "due process", which is the way the legal procedures must be followed to enjoy full credibility and respect from the public. However, the challenge is enormous because it involves the full professionalization of the country's system of government, i.e., a radical change from the country's nature and history.

The issue does not belong to the executive branch of government alone. If anything, recent years have shown that the institutional transformation that Mexico needs in order to progress and achieve prosperity cannot depend on a leader or a skilled politician. The security problem facing the country is

suggestive: rather than corruption, drugs, or violence, the security problem reveals the absence of a functional system of government, a governing system that includes the three branches of government but also local governments. None of these have been professionalized and become a functional, competent, and effective government that is insulated from frequent political changes.

The system created by the PRI served the country but is no longer able to meet the demands and needs of a population that is sick of abuse and wants to achieve progress. Even worse, the system, dedicated to merely serving the interests of the political class, not only alienates the citizen, it also undermines its own power. Public discussion is ideological because it prevents a substantial debate: but it is the substantive that will make the citizenry join and would make it possible to break the vicious cycles that characterize the governmental system.

The choice ends up being very clear and simple: advance or remain in a process of change that is permanently betting on the future but never actually getting there. Mexican politics' way of functioning is typically two steps forward and one step back. This is what explains that, indeed, there is progress, but the cost of failing to consolidate what was promised implies a cost that just keeps accumulating. Reforms are approved but not completed; high growth rates are promised but the principle of fiscal stability is violated; society is threatened instead of being provided with certainty and explanations for the government project.

Mexico is a great country, far greater than its problems. Thanks to the tolerance of its people, it has managed to maintain civil peace, even while being besieged by organized crime. What has not been achieved is stable economic growth and sustained development. In the absence of clear and reliable rules, all that will be accomplished is to enhance the differences and inequalities. The two Mexicos are there because that is what the system has created. The goal should be unifying the country into one single Mexico – the successful one.

“There are no solutions. There are only trade-offs.”

Thomas Sowell

Endnotes

- 1 McKinsey Global Institute, *A tale of two Mexicos: Growth and prosperity in a two-tier economy* http://www.mckinsey.com/Insights/Americas/A_tale_of_two_Mexicos?cid=other-eml-alt-mgi-mck-oth-1403
- 2 Fadiman, Clifton and Bernard, André, *Bartlett's Book of Anecdotes*, Little Brown, Boston 1985, p 118
- 3 Brinton, Crane, *The Anatomy of Revolution*, Vintage, New York, 1965, pp 237-239
- 4 Huntington, Samuel, *Political Order in Changing Societies*, Yale University Press, Clinton, MA, 1968, chapter 5
- 5 Monthly survey, Francisco Abundis available at www.Parametria.com.mx
- 6 Brennan and Buchanan, *The Reason of Rules*, p16
- 7 Elizondo, Carlos, *La Importancia de las reglas*, FCE, p20
- 8 <http://www.voxeu.org/article/political-economy-liberal-democracy>
- 9 <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation>
- 10 Fukuyama, Francis, *What is Governance?* TOC, Vol. 26, Issue 3, July 2013, pp 347-368

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